

N.H. Petroleum Storage Facility Fund Program – Reimbursement Request Checklist

A Cover Letter. (See example in the Manual.)	ш	Copies of all corrective action reports/documentation related to the invoiced costs, if not previously submitted
A completed Request For Reimbursement Authorization form found in the Manual. The form is needed for the first reimbursement request submitted by a facility owner or Property Transferee. If		A copy of the services contract between the facility owner or Property Transferee and the Applicant, if applicable.
fund eligibility is transferred, a form is needed for the first request from the new owner.		A copy of the work scope, change order, or DES corrective action request letter applicable to the request, or contractor daily work logs for "emergency services".
Property transfer deed and amended facility registration form for the first request from a Property Transferee.		Employee wage, benefits, and equipment operating cost data for corrective action performed by a facility owner or Property
Facility compliance information, if applicable.		Transferee.
Complete information on payment(s) received from private insurance, including a statement explaining the coverage limits, a letter denying coverage, or a notarized statement for un-insured properties.		A written explanation and request for overage payment if an approved budget was exceeded
A summary (listing) of invoiced expenses. (See example format in the Manual.)		
Copies of invoices from all contractors and their sub-contractors. Invoices must be directed to the facility owner or Property Transferee, including a request submitted by an Applicant. Invoices cannot be directed to DES.		



N.H. Petroleum Storage Facility Fund Program – Ten Common Reasons For A Delay In Reimbursement Request Approval

- 1. The Facility Is Not In Substantial Compliance With DES Rules.
- 2. The Work Was Not Required By DES Or Was Not Approved For Scope And Budget.
- 3. The Authorization For Reimbursement Form And/Or Property Transferee Information Was Not Provided Or The Form Is Not Signed.
- 4. Private Insurance Coverage Information Was Not Provided Or Is Not Complete. A Notarized Statement Is Required For Un-Insured Properties.
- 5. Prime Contractor, Or Applicant, Invoices Are Not Directed To The Facility Owner Or Property Transferee.
- 6. Subcontractor Invoices Are Not Included.
- 7. A Written Contract With 'Waiver Of Claims Provisions' Is Not Included With An Applicant Request.
- 8. Corrective Action Reports Or Related Documentation Are Not Included, Are Not Complete, Or The Corrective Action Work Is Still In Progress.
- Corrective Action Costs Are Not Reconciled Against The Approved Budget, Costs Are Invoiced As Lump Sum, Costs Are In-Excess Of Published Unit-Based Or Project-Based Costs, Overages Are Not Justified, Or Non-Reimbursable Costs Are Included.
- 10. Waivers Are Needed.



N.H. Petroleum Storage Facility Fund Program – Information Resources

Facility Compliance, Reimbursement & Remediation Program Information Contacts

For UST facility compliance information call Thomas Beaulieu at (603) 271-2986. tbeaulieu@des.state.nh.us

For AST and on-premise-use facility compliance information call Michael Juranty, P.E., at (603) 271-6058. mjuranty@des.state.nh.us

For remediation implementation work scope approval information, including contaminated soil excavation and disposal, call Robin Mongeon, P.E. at (603) 271-7378. rmongeon@des.state.nh.us

For various corrective action report and investigation work scope approval information call Mark Ledgard, P.G. at (603) 271-7376. mledgard@des.state.nh.us

For fund program eligibility and reimbursement request approval information call Joyce Bledsoe, P.G. at (603) 271-8740 jbledsoe@des.state.nh.us

Reimbursement Program Supervision & Oil Fund Disbursement Board Information

Timothy R. Denison, Supervisor Fund Management Section (603) 271-2370 tdenison@des.state.nh.us

Remediation Program Supervision

Gary Lynn, P.E., Supervisor Petroleum Remediation Section (603) 271-8873 glynn@des.state.nh.us

Facility Compliance & Initial Response Program Supervision

Lynn Woodard, P.E., Supervisor
Oil Compliance & Initial Response Section
(603) 271-1165 lwoodard@des.state.nh.us

Work Scope & Reimbursement Submittals Should Be Forwarded To:

Joyce P. Bledsoe, P.G., Fund Manager Oil Remediation and Compliance Bureau 29 Hazen Dr., P.O. Box 95 Concord, NH 03302-0095

Oil Remediation Program Website: www.des.state.nh.us/orcb_hwrb.htm

N.H. Petroleum Storage Facility Fund Program – Quick Reference Guide



Oil Fund Disbursement Board

Program Summary

Provides excess insurance coverage for corrective action & third-party damage costs due to a petroleum release. Enabled under state statutes RSA 146-D, RSA 146-E & RSA 146-F; N.H. Administrative Rules Odb 400.

Coverage for UST, AST, & on-premise-use heating oil tank facilities, including residential.

Reimbursement for invoiced costs; proof of payment is not required.

Work Scope & Budget Approval

All corrective action work must be pre-approved by DES for scope & budget.

Forms are available for a fund-eligible party to submit proposed work scope budgets and work scope change orders.

Quick-form approval is available for on-premise-use heating oil facilities.

<u>Securing Program Coverage & Submitting A</u> Reimbursement Request

Owner Responsibilities:

Achieve & maintain facility substantial compliance.

Determine the limits of private insurance coverage.

Report releases and hire a consultant or contractor.

Follow guidance in the Manual for submitting a complete reimbursement request.

Key Provisions of Policies, Rules & Statutes

DES determines who is responsible for a petroleum release. The fund-eligible party must also be the responsible party.

Qualifying petroleum storage facilities include those that are currently in use, & those that are permanently out-of-service. Facilities must be in substantial compliance with applicable regulations.

Qualifying persons include current & former facility owners and certain property owners.

Coverage is transferable.

Direct payment to consultants & contractors is available.

Deductibles & reimbursable cost criteria apply.

Reimbursable Costs

Costs for DES-required corrective action work are reimbursable.

Release discovery costs & facility compliance costs are not reimbursable.

Unit-Based & Project-Based Costs must conform to those in the Manual.

Certain reimbursable cost restrictions apply.

<u>Ten Common Reasons For A Delay In Reimbursement</u> <u>Request Approval</u>

- 1. The facility is not in substantial compliance with DES rules.
- The work was not required by DES or was not approved for scope & budget.
- The Authorization For Reimbursement Form and/or Property Transferee information was not provided or the form is not signed.
- Private insurance coverage information was not provided or is not complete. A notarized statement is required for uninsured properties.
- 5. Prime contractor. or Applicant. invoices are not directed to the facility owner or Property Transferee.
- 6. Subcontractor invoices are not included.
- 7. A written contract with "Waiver of Claims Provisions" is not included with an Applicant request.
- Corrective action reports or related documentation are not included, are not complete, or the corrective action work is still in progress.
- Corrective action costs are not reconciled against the approved budget, costs are invoiced as lump sum, costs are in-excess of published Unit-Based or Proiect-Based Costs, overages are not justified, or non-reimbursable costs are included.
- 10. Waivers are needed.

N.H. Petroleum Storage Facility Fund Program - Overview

Type of Storage Facility	DES Project Type	Applicable Fund (1)	Compliance Requirements	Deductible Schedules (2)		Funding Limits
Type of Storage Facility	DEST TOJECT TYPE	Applicable Fullu (1)	Compliance Requirements	After 7/1/95	Before 7/1/95	(3)
UST facilities regulated under Env-Wm 1401 storing gasoline or diesel products	"LUST"	ODDCF	UST facilities must be in substantial compliance with Env- Wm 1401	1 to 3 facilities owned; \$5,000 per occurrence	1 facility owned; \$5,000 per occurrence	\$1,500,000 Costs incurred
AST facilities storing less than 1,000,000 gallons of gasoline or diesel fuel	"LAST"	(RSA 146-D)	AST facilities must be registered Facilities must meet state fire	4 to 9 facilities		after 7/1/88
AST facilities storing less than 1,000,000 gallons of fuel oil for heating purposes	"FUEL"	FODCF (RSA 146-E)	codes, and federal regulations for spill control and countermeasures (40 CFR 112) Env-Wm 1402 regulated facilities must be in <i>substantial compliance</i>	owned; \$10,000 per occurrence 10 to 19 facilities	2 to 19 facilities owned; \$20,000 per	\$500,000 Costs incurred after 10/1/92
Facilities storing motor oil or used motor oil	"MOST"	MODCF (RSA 146-F)	Facilities must meet local codes, state fire codes, and federal regulations for spill control and countermeasures (40 CFR 112 Env-Wm 1401 & 1402 regulated facilities must be in substantial compliance	owned; \$20,000 per occurrence 20 or more owned; \$30,000 per occurrence	occurrence 20 or more owned; \$30,000 per occurrence	\$500,000 Costs incurred for a discharge discovered after 7/1/95
Facilities storing fuel oil for on-premise-use	"OPUF"	FODCF (RSA 146-E)	All facilities must have a vent alarm Facilities installed after August 28, 1993, must meet local codes, and NFPA 31 standards Env-Wm 1401 & 1402 regulated facilities must be in substantial compliance	\$100 for each discharge discovered after 7/1/97		\$500,000 Costs incurred after 10/1/92

⁽¹⁾ UST Facilities regulated under Env -Wm 1401 storing fuel oil, motor oil, or used motor oil are funded under RSA 146-D, if the discharge was discovered before 1/1/95.

⁽²⁾ The applicable deductible schedule for LUST, LAST, FUEL and MOST projects is dependent on the date of discharge discovery, either before or after 7/1/95.

⁽³⁾ Funding start date is the statutory limit date or the date of discharge discovery; whichever is later.

STATE OF NEW HAMPSHIRE

Petroleum Storage Facility Fund Program RSA 146-D, RSA 146-E, and RSA 146-F

Guidance Manual

Policies, Rules & Procedures for Reimbursement



October 1, 2003

PREFACE

This document provides information, guidance, forms and procedures for obtaining reimbursement from the New Hampshire Petroleum Storage Facility Fund Program. It is organized in seven sections including: Program Overview, Key Provisions Of Policies, Rules & Statutes, Achieving & Maintaining Facility Substantial Compliance, Work Scope & Budget Approval, Reimbursable Corrective Action Costs, Unit-Based & Project-Based Cost Categories, & How-To Obtain Fund Program Coverage & Submit A Reimbursement Request. A Quick Reference Guide, Reimbursement Submittal Checklist and a Contact List for further information are also included separately in the binder pocket. Feel free to contact any of the individuals on the list if you have questions. The Appendix includes forms, guidance documents, policy statements, rules, and statutes. In addition:

<u>Program Note:</u> Program notes that provide important information appear throughout the Guidance Manual in this form.

This *N.H. Petroleum Storage Facility Fund Program Guidance Manual* combines & replaces previously published Oil Fund Disbursement Board documents including the *Fund Program Description* and *Report on Unit-Based & Project-Based Costs*.

The Department of Environmental Services encourages the use of electronic media when submitting documents.

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SECTION I – PROGRAM OVERVIEW

What Is The New Hampshire Petroleum Storage Facility Fund Program?

The fund program provides excess insurance coverage to an owner of a petroleum storage facility who incurs corrective action costs or third-party damage costs when a release of stored product occurs. The program is authorized by three state statutes; the Oil Discharge & Disposal Cleanup Fund under RSA 146-D, the Fuel Oil Discharge Cleanup Fund under RSA 146-E, and the Motor Oil Discharge Cleanup Fund under RSA 146-F. Facility owners may reimbursement for incurred costs not covered under private insurance.

What Type Of Petroleum Storage Facility Is Covered Under The Program?

Coverage is available for underground storage tank (UST) facilities, above ground storage tank (AST) facilities, and on-premise-use fuel oil facilities (including residential properties) – subject to certain facility operating standards, fund availability and coverage limits, work scope approval, and reimbursable cost limitations detailed in this manual.

How Is The Program Administered?

The program is administered by the Oil Fund Disbursement Board (Board), which is composed of members representing the N.H. Legislature, the petroleum industry, state agencies and the general public. The Board is administratively attached to the New Hampshire Department of Environmental Services (DES), which performs program support services. The

Board meets monthly to hear appeals, approve activity reports, and review policies and procedures. Reimbursements are subject to Board policies and the requirements of N.H. Administrative Rules Part Odb 401 effective July 22,1997. Policy statements and rules may be found in the Appendix.

What Are The Responsibilities Of DES & The Petroleum Storage Facility Owner?

When a petroleum release occurs, corrective action is needed that typically includes performing an investigation to determine the extent and magnitude of the problem, and developing a remediation plan. Quite often, initial response action is needed to abate imminent environmental or health hazards. This may include soil removal, free product removal or vapor abatement measures. DES is responsible ensuring that surface waters. groundwater and public health are protected, by requiring the owner to perform investigation and remediation, and for managing the corrective action. The facility owner/operator has a duty to report when a release occurs and must undertake corrective action to meet state requirements.

Where Do I Start & What Steps Do I Follow?

Read Sections II, III, IV, V and VI for key information on fund program requirements, work scope approval, and reimbursable costs. Follow the "How-To" procedures in Section VII if you need fund program assistance.

SECTION II – KEY PROVISIONS OF POLICIES, RULES & STATUTES

Liability For Petroleum Release Corrective Action

When a petroleum release occurs, DES personnel will determine who is responsible for performing corrective action, and will issue a Letter of Responsibility. lf third-party а responsible for a facility release, and not the owner, the fund is not available. In such cases, the liable party must complete corrective action with their own resources. For example, a release due to an over fill caused by a petroleum delivery company is not a covered occurrence.

<u>Program Note</u>: The fund-eligible party must also be the party liable for performing corrective action.

Qualifying Petroleum Storage Facilities

Qualifying facilities include; Active Facilities where one or more tanks are currently in-service, as defined by DES rules, and a release has, or is, occurring, and Permanently Closed Facilities, where all tanks are closed in accordance with DES rules and a release has occurred.

Qualifying Persons Are; Petroleum Storage Facility Owners, Property Transferees, Or Owners Of Land

Qualifying facility owners include the current owner of an Active or Permanently Closed Facility, and the former owner of an Active Facility who incurred costs during their period of ownership. (Incurred costs, includes work contracted prior to transfer of facility ownership.) A qualifying owner is the person or entity that (1) has, or held, legal title to the

facility and (2) whose name appears, or appeared, on the DES facility registration form, if applicable.

A qualified Property Transferee is a person or entity that takes title to land where a Permanently Closed Facility was located, *and* the facility owner initiated corrective action.

Qualifying owners of land are those who own property where an on-premise-use facility is or was located. (For example, a manufactured housing park owner.)

<u>Program Note:</u> The fund(s) is not available to owners of contaminated property if there is no qualifying petroleum storage facility. The fund program is not available to property tenants.

Transfer Of Facility Ownership & Fund Eligibility

Fund program coverage is transferable.

Upon legal transfer of Active Facility ownership the former owner is no longer qualified for fund coverage, unless liability for corrective action is established under the facility sales agreement. If the former owner is liable under a sales agreement, a waiver may be sought to obtain or continue fund coverage. (See Section VII for information on submitting waiver requests.)

At its discretion, a qualified Permanently Closed Facility owner may transfer facility ownership and fund eligibility to a Property Transferee, or may retain eligibility. A transfer of eligibility may occur provided the facility was closed on or after the dates shown below.

Statute	Facility Type	Closure Date
RSA 146-D	UST	7/1/88
RSA 146-D	AST	7/1/93
RSA 146-E	AST/On-Premise-Use	10/1/92
RSA 146-F	AST/UST	10/1/95

If the facility was closed before the above dates, eligibility cannot be transferred. Therefore, the owner who initiated corrective action must retain liability and continue the work after they sell the property.

Qualifying Applicants

A qualified Applicant is a person or firm hired by a qualified facility owner, landowner, or Property Transferee, under a written contract, to manage and oversee the corrective action. An Applicant may seek direct reimbursement from the fund. provided the Applicant agrees to waive all claims against the owner or Property Transferee, and obtain waivers of claims from any subcontractors, for the services performed. (See N.H. Administrative Rule Part Odb 401.14 in the Appendix.) The written contract for services must be executed prior to start of the work, and the waiver of claims language must be included prior to reimbursement approval.

<u>Program Note:</u> Owners may not establish Applicant contracts that violate statute or rules.

An Applicant may not balance-bill their client for non-reimbursable costs.

Active Petroleum Storage Facility Operating Requirements

To qualify for state fund coverage, the active facility must be in compliance with all applicable state and federal rules for facility operation and maintenance. General requirements for each facility type are as follows:

- Motor fuel UST facilities must be registered with DES and be in substantial compliance with N.H. Administrative Rules Part Env-Wm 1401.
- Motor fuel and fuel oil AST facilities must be registered with DES, be in substantial compliance with N.H. Administrative Rules Part Env-Wm 1402, meet state fire codes, and meet federal regulations for spill prevention control and countermeasures (40 CFR 112). The deadline for AST registration was July 1,1996; contact DES regarding a waiver.
- On-premise-use fuel oil facilities installed on or after August 28,1993, must meet all applicable local codes or ordinances and National Fire Protection Association standard NFPA 31. All on-premise-use facilities must be equipped with a vent (overfill) alarm system. Owners of on-premise-use facilities regulated under Env-Wm 1401 or 1402 must demonstrate substantial compliance.

Program Note: Under a separate program, owners of residential on-premise-use facilities, who meet low-income guidelines, may qualify for a \$1,000 grant to improve or replace a sub-standard system. Call DES for details.

 Motor oil or used motor oil storage facilities must be in substantial compliance with Env-Wm 1401 or 1402 (if applicable), meet local codes, state fire codes and federal regulations for spill prevention, control and countermeasures.

Achieving and maintaining facility substantial compliance is explained further in Section III.

<u>Program Note</u>: A qualifying former owner of an Active Facility cannot receive reimbursement if the current owner does not achieve substantial compliance.

Private Insurance Coverage

By statute(s), the fund program provides excess insurance coverage. Facility owners or property transferees must file a claim with their private insurance carrier first. A private insurance claim must specifically request if coverage is available for any corrective action costs that may be incurred, for (1) damages to land owned, i.e., "first-party coverage", and for damages to waters of the state and/or abutting landowners, i.e., "thirdparty liability coverage". The facility owner or property transferee must submit a copy of the correspondence from their company, which insurance available coverage. If there is no private insurance policy in force, a notarized letter stating so must be provided. The state

fund is available when there is no private insurance, no coverage, or only limited coverage.

<u>Program Note</u>: The fund program provides excess insurance coverage for a facility owner, landowner, or Property Transferee. It does not provide liability coverage for corrective action service providers.

Under New Hampshire law, oil discharge impacts to water are deemed to be damages to the state. The Board presumes such damages are covered under (most) standard homeowner insurance policies. issued Insurance Services Office guidelines, which include so-called "Section II -Liability Coverage" provisions. However, if a private insurer is (1) non-responsive to a request for a (first-party or) third-party coverage determination, (2) will not automatically provide third-party liability coverage, or (2) will not certify that such coverage is not available under its policy, the Board may still reimburse the corrective action costs.

Program Note: In cases of non-responsive private insurers, a waiver of Board rules will be required to receive reimbursement. The Board will reserve its rights to take legal action against the insurer to recover reimbursed costs.

Petroleum Release Confirmation

The fund program is not available for corrective action costs resulting from incidental spills, or releases (a.k.a. a discharge) not directly associated with the operation of a qualified facility.

If a release occurs during the operation of an active facility or is found during facility closure, release confirmation "discovery") usually is readily accomplished. However, confirmation of a release associated with historic facility operation is more difficult since the contamination is found after-the-fact of facility closure. In such cases, the "preponderance of the evidence" must point to the facility as the source of the problem. Property owners, sellers, or buyers, should be aware the fund program not available for petroleumcontaminated sites with no confirmed facility source.

<u>Program Note:</u> Regulated facility closure reports, site investigations, or other soil or groundwater analytical data, may serve for release confirmation.

Limits Of Fund Program Coverage & Deductibles

The fund program is available for both directly incurred corrective action costs, i.e., first-party costs, and for third-party damage costs resulting from lawsuits. Per occurrence reimbursement limits and initial corrective action cost deductibles are shown in the fund program overview table on the Quick Reference Guide.

The deductible is usually subtracted from the amount of reimbursable costs determined for an initial reimbursement request. The facility owner or Property Transferee will receive an invoice for the deductible or reimbursement amount, whichever is less, following approval of an initial request submitted by an Applicant.

In determining deductibles, DES personnel count the number of facilities owned (registered by) the owner or property transferee filing a reimbursement request. The facility count includes all active facilities, and any permanently closed facility where a release has occurred, as of the date of the reimbursement request submittal.

<u>Program Note:</u> There are two deductible schedules that apply based on the date of discharge discovery, before or after 7/1/95. See the fund program summary table on the Quick Reference Guide.

Deductibles cannot be waived or forgiven.

Reasonable Costs - Work Scope & Budget Approval

Reimbursable corrective action costs are those reasonable costs representing the prevailing market rate for labor, materials, goods, services or task. With the exception of *emergency services*, all corrective action work must be preapproved by DES personnel for both scope and budget.

The Board has determined the reasonable cost for a variety of Unit-Based and Project-Based corrective action services that are detailed in Section VI.

See Section IV for work scope & budget approval details.

Corrective Action Performance Standards

Typically, reimbursement requests may not be processed for payment until the corrective action is completed in accordance with DES requirements, and the appropriate report is submitted and approved.

However, Pay-for-Performance contracts and payment for work-in-progress are permissible, whereby DES, the facility owner or property transferee, and the corrective action service provider have agreed on (1) a payment schedule for completed work and (2) the submittal of certain interim corrective action reports.

<u>Program Note:</u> Reimbursement requests and corrective action reports should be submitted concurrently to avoid payment delays.

Reimbursable First-Party Costs & Third-Party Damage Costs

Reimbursable corrective action costs include initial response actions, including emergency services, site investigations, remedial plan development, remedial plan implementation, permit application preparation, DES permit and local corrective action fees, and groundwater monitoring.

Reimbursable third-party damage costs include court-ordered damages for bodily injury or property damage claims. Contact DES personnel for specific guidance on reporting a third-party demand, filing a copy of a writ or petition, and other information.

See Sections V & VI for details on reimbursable corrective action costs.

Reimbursement Request Submittals

Petroleum storage facility owners, a Property Transferee, or an Applicant may submit a request for reimbursement upon completion of a corrective action phase, as directed by DES.

See Section VII for the "How-To" on securing eligibility and submitting a reimbursement request.

SECTION III - ACHIEVING & MAINTAINING FACILITY SUBSTANTIAL COMPLIANCE

What Is Facility "Substantial Compliance" & How Do I Achieve It?

The fund program statutes include requirements that facilities must be operated in compliance with applicable local, state and federal standards. By policy, the Board has determined that certain compliance requirements related to release prevention apply to active regulated UST and AST facilities. Facility owners must demonstrate they have achieved and maintained *substantial* compliance as a condition of fund eligibility.

The Board policy statement relating to substantial compliance and fund program eligibility is included in the Appendix. Owners should contact a certified UST or AST system installer, consultant, or contractor to review their facility compliance status, and correct deficiencies.

Active Facility Compliance Inspections

DES personnel perform field inspections of active facilities throughout the year. Facility owners should expect to be contacted that an inspection is due, and should provide assistance as necessary. Periodic inspections and compliance document record keeping are critical in preventing releases and providing early detection to minimize the spread of contamination. DFS has identified numerous facilities, already in the fund program, where second releases have occurred. In some cases, new releases are the direct result of failure to perform certain facility compliance activities. Early

detection opportunities are lost due to failure to maintain adequate records.

Substantial Compliance & Fund Eligibility

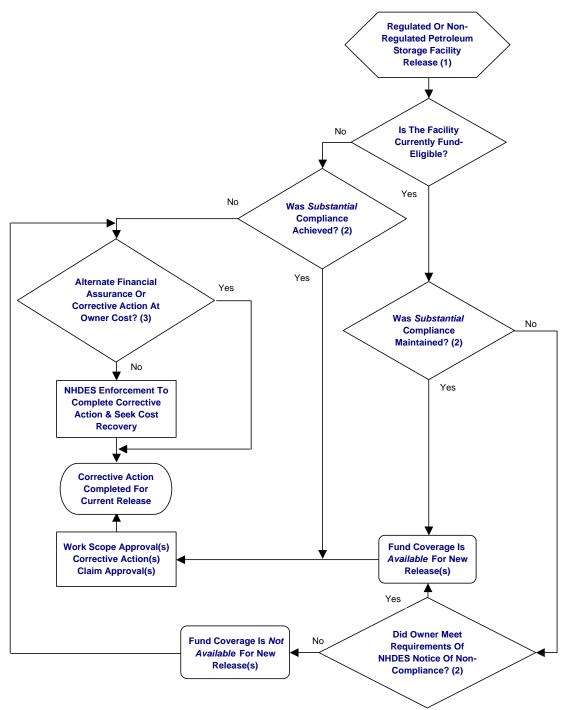
When a facility release occurs and action is DFS corrective initiated. personnel will review compliance file records and notify the facility owner of their fund-eligibility status. If the facility is permanently closed and a proper closure report was provided, the owner is eligible for the fund program. If the facility is active DES personnel will perform an inspection and compliance any deficiencies must be corrected before reimbursement requests can processed. Periodic compliance reviews will be performed during the corrective action process. The facility owner must certify that compliance will be maintained by signing the Owner's Liability Statement and Affirmation, which is Section D on the Authorization For Reimbursement form. included in the Appendix.

<u>Program Note:</u> Failure to achieve and maintain substantial compliance after the first release may result in permanent loss of coverage for future releases.

N.H. Petroleum Storage Facility Fund Program Facility Compliance (Eligibility) & Corrective Action Process



Oil Fund Disbursement Board



- (1) USTs regulated under Env-Wm 1401, ASTs regulated under Env-Wm 1402, or non-regulated on-premise-use heating oil & other small fuel tanks.
- (2) Fund coverage is not available for an initial release if substantial compliance is not achieved. Existing Fund coverage will not be available for a new release if compliance once-achieved, is not maintained, or if the owner did not comply with a NHDES Notice of Non-Compliance & Permit Revocation for a UST facility, Order to Cease AST Operation, or other regulatory or Best Management Practice notice of non-compliance.
- (3) Owners of USTs regulated under Env-Wm 1401, must maintain \$1M financial assurance if the Fund is not available.

SECTION IV - WORK SCOPE & BUDGET APPROVAL

Corrective Action Phases

Under its rules and guidelines, DES categorizes corrective action work by phase for purposes of consistent identification, smooth workflow and cost These phases are; Initial control. Response Action (IRA), Initial Site Characterization, Free Product Removal. Site Investigation, Remedial Action Plan. Remedial Action Plan Implementation and Groundwater Monitoring. Groundwater monitoring is typically performed under a DFS-issued site groundwater management permit, as required by statute.

Reasonable Cost

The Board has determined the reasonable cost for a variety of Unit-Based and Project-Based corrective action services that are detailed in Section VI. These cost categories are periodically updated with the assistance of an ad-hoc advisory committee composed of DES personnel, elected representatives of the consultant and contractor service provider market sectors, and members of the Board.

Pre-Approval By DES Required

As noted in the previous section, all corrective action work must be preapproved by DES personnel for both scope and budget. In the event of a petroleum release, the facility owner must retain a contractor and/or consultant to complete work under a corrective action phase as directed by DES personnel. This may require preparation and submittal of a work scope and budget for DES approval using Unit-Based Costs,

and/or adherence to one of the Project-Based work scope categories. Two forms are available for use in submitting a work scope and budget or a work scope change order, and are included in the Appendix. (Contact DES with questions on the use of the available forms, and see additional guidance in this Section.)

On-Premise-Use Facilities

For IRA work at on-premise-use fuel (OPUF) oil facilities, including private homes. involvina the excavation. transportation and disposal contaminated soil, an additional special form is available for projects that can be completed in 5 days or less. At the start of an OPUF corrective action project, DES personnel will determine whether the 5-Day form is appropriate, in consultation with the service provider(s).

Work Scope Approval Process

Because of the specialized nature of corrective action services, different DES personnel are responsible for approval and oversight of work as a project moves from one phase to the next. A list of those personnel and their area(s) of responsibility is included in the binder pocket.

For the most part, corrective action work performed under the fund program is done on a time & materials basis, subject to the costs and guidelines provided in Section VI. Whenever possible, DES personnel will request that work be performed following a standard, Project-Based scope, as this facilitates expeditious corrective action, minimizes administrative

time and simplifies the reimbursement process. However, for complex projects, DES may request that a project-specific work scope and budget be prepared to conduct investigative, remedial plan development, or remedial plan implementation work.

Competitive Pricing Requirements

With the exception of projects involving use of sole-source technology, the Board requires that implementation of a DESapproved remedial plan be competitively bid. The overseeing consultant and the contractor construction performing remedial plan implementation (RPI) work, must adhere to standard engineeredconstruction contract practices, under American Society of Civil Engineers guidelines. For some RPI work, the Board encourages Pay-for-Performance (PfP) Contracts. A PfP contract project is conducted under agreement an negotiated among DES, the corrective action provider and the facility owner or Property Transferee. A PfP contract agreement is based on the service provider meeting specific overall performance standards, and achieving specific performance milestones as the work progresses, which may or may not include a performance time schedule. Reimbursement from the fund program for PfP work is conditional on performance, typically paid as a percentage of the total contract amount. for the percent performance achieved.

Implementation of Corrective Action

If DES requests work conforming to the Project-Based Cost categories described in Section VI, the consultant or contractor

may proceed without submitting a work scope and budget. However, as noted previously, if the proposed corrective action does not conform to the Project-Based Cost categories, a work scope and budget must be submitted to DES for review and approval prior to performing the work. This would include complex site investigations, Initial Response Action, Remedial Action Plan, and Remedial Plan Implementation work.

If unforeseen Unforeseen Conditions: conditions are encountered performance of corrective action pursuant to a Project-Based Cost category, or a submitted and approved scope of work, there are two alternatives available for approval. A Change Order is required if the scope must be modified to accomplish the intent of the Project-Based Cost category or work scope approval. That is, a new task(s) is needed. However, if only additional time and materials are needed to complete an approved scope, the cost overage may be justified at the time of reimbursement request submittal. Overage justifications must be provided in writing describing the reason for the overage, and detailing the incremental costs above the original approval.

<u>Program Note:</u> For all work scope budget overages, only those costs incurred due to circumstances beyond the reasonable knowledge and control of the consultant or contractor will be considered for approval.

<u>Complex Sites</u>: For sites in a complex hydrogeologic setting, or that otherwise involve atypical conditions that may impact the scope and cost of any proposed Project-Based Cost work

category, there are three alternatives available for approval. A site-specific work scope and budget may be submitted, a Change Order may be submitted, or advance communication with a DES project manager and an overage justification may be used.

DES Information Requests: Additional time and materials costs incurred in responding to DES project management personnel requests for information may be addressed through a Change Order submittal or an overage justification.

Use Of The Forms

Work Scope Authorization: The Work Scope Authorization form is for use by a consultant or contractor to submit a time and materials proposed scope and budget for performing corrective action, when the Project-Based Cost categories described herein do not apply, but a highly detailed work scope is not necessary. This would include, but not be limited to, Initial Response Action and simple remedial soil excavations not subject to bidding. This form is not appropriate for complex work, such as remedial action plan preparation and implementation. In such cases, a "formal work scope and budget" must be submitted which describes the work to be performed, in detail. Contact DES for an example of a formal work scope and budget.

<u>Change Order Form:</u> The Change Order form is for use by a consultant or contractor to submit a request to modify the scope of a Project-Based Cost category described herein, or other approved work scope, due to unforeseen conditions encountered after the work is

initiated. In certain cases DES may provide verbal approval for a change order, provided a written Change Order form is submitted within 48 hours of the verbal approval.

On-Premise-Use Facility Work Scope Authorization: The OPUF Work Scope Authorization form is for use by DES to approve soil excavations and restorations when the time required to complete the excavation effort is 5 days or less.

Engineer Certification of Contractor Quantities: The certification form is for use to support a contractor reimbursement claim for remedial plan implementation.

What Happens When A Work Scope & Budget Is Submitted?

If a work scope and budget submittal (SOW) does not provide sufficient descriptive or cost information, it may be returned to the sender, or held until it is completed. Typically, DES personnel will telephone to request additional information to complete a submittal. If complete, the SOW is logged into a database for tracking and reporting and assigned to a project manager for review. If DES records indicate the petroleum storage facility is not in substantial compliance with applicable operating requirements, the owner may be notified when the SOW is processed or is informed otherwise of compliance deficiencies and that an inspection may be needed.

How Do I Prepare & Submit A Work Scope & Budget?

DES recommends that corrective action service providers prepare and submit work scopes and budgets. Service providers with fund program experience are already familiar with DES corrective action criteria and approval procedures. In addition, work scope and budget preparation costs are reimbursable.

This recommendation also applies for corrective action work that will be performed by the facility owner or Property Transferee. The overseeing consultant is best qualified to prepare the submittal.

A list of DES personnel that receive and process work scopes is included in the binder pocket.

SECTION V – REIMBURSABLE CORRECTIVE ACTION COSTS

Reimbursable Corrective Action

Reimbursable corrective action costs are those costs incurred by a qualifying facility owner or Property Transferee, in responding to a DES work request. As noted in the previous section, corrective action work is identified by phase and, with the exception of emergency services, must be pre-approved by DES for both scope and budget. The Board has determined the reasonable cost for a variety of Unit-Based and Project-Based corrective action services that are detailed in Section VI. Under its rules, the Board has categorized reimbursable costs to include:

- Management of virgin and waste oil petroleum contaminated soils in accordance with DES regulations;
- Services associated with temporary surface and groundwater discharge permits that are not related to closure or installation of a fund-eligible petroleum storage facility;
- Corrective action in response to a petroleum release performed in accordance with DES regulations and policies; and
- > Fees for corrective action permits.

Reimbursable Cost Exclusions

Certain reimbursable cost exclusions apply, as follows:

 For corrective action performed by a facility owner or Property Transferee, reimbursable costs are limited to

- actual costs based on employee pay rates, cost of benefits and equipment operating expenses.
- Reimbursable costs are limited to costs charged by corrective action service providers that are invoiced to the facility owner or Property Transferee, and may only include costs for work directly associated with the performance of corrective action.
- Inspection fees, or access fees charged by property owners, are not reimbursable.
- Contaminated soil excavation restoration is limited to the cost of inkind replacement by quantity.
- Property restoration is limited to damages resulting from the performance of corrective action that are not the result of service provider negligence. **Property** error or enhancement costs are not reimbursable.
- A facility owner's or Property Transferee's legal, administrative, fiduciary, management or supervisory costs, are not reimbursable.
- Facility compliance costs are not reimbursable.
- Interest charges on unpaid invoices are not reimbursable.
- Reimbursement is limited to reasonable costs and no reimbursement may exceed actual invoiced costs paid or incurred, less any discounts received.

- Markup of subcontracted services is limited to 10%, and no markup is allowed for expenses, materials or supplies. An overseeing consultant may not markup the services of an RPI contractor.
- Non-emergency overtime costs are reimbursable at the straight-time rate.
 Overtime costs for emergency services are reimbursable at prevailing market rates.
- Costs associated with the discovery of a discharge are not reimbursable.
- Costs in excess of approved budgets are not reimbursable, in the absence of extenuating circumstances that were beyond the reasonable knowledge or control of the service provider.

SECTION VI – UNIT-BASED & PROJECT-BASED COST CATEGORIES

"Reasonable Cost" Defined

The Administrative Rules of the Board, under Part Odb 401, define "Reasonable Cost" as the "prevailing market rate for labor, materials, goods, services or task for performing corrective action." Odb 401.03(ad).

Unit-Based & Project-Based Costs

Reasonable corrective action service costs are categorized as Unit-Based or Project-Based, and are determined from market survey data obtained by DES and the New Hampshire Petroleum Fund Advisory Committee. This cost information is used to facilitate corrective action preapproval, performance, and subsequent reimbursement request processing. The cost data published herein represents the typical upper limits of the "prevailing market rate", for services that are not bid. Therefore, the cost data contained herein is not applicable for the implementation of a DES-approved Remedial Action Plan with the exception of preparation of soil excavation bid specifications and bid administration

Under Odb 401.29(i), reimbursement for incurred corrective action costs is limited to actual invoiced costs (less any discounts received). For work scope and budget proposals or reimbursement requests, where costs are at or below those published herein, the costs are presumed reasonable and therefore reimbursable unless otherwise disqualified. Any submitted costs exceeding those published herein, are presumed unreasonable, and therefore

subject to reduction to the prevailing market rates.

In general, all proposed corrective actions subject to Part Odb 401, must conform to the Unit-Based Cost or Project-Based Cost categories described herein. Nonconforming corrective action costs are subject to pre-approval by DES, in consideration of a written justification that (1) describes the need for the work and (2) includes data that demonstrates that proposed Unit-Based Costs represent a prevailing rate.

Three tables are included at the end of this Section that list Unit-Based and Project-Based Costs established by the Board.

Use Of The Cost Data

<u>Unit-Based Costs</u>: "Unit-Based Costs" are a unit of labor, service, activity, or product delivered for a set cost. Examples include laboratory analytical tests or an hourly rate for a specific piece of equipment such as a backhoe. It may not be reasonable in all cases to apply Unit-Based Costs over the entire duration of the activity being performed. Therefore, DES reserves the right to consider "economy of scale" in reviewing work scopes, and may require negotiation of costs, or bidding, for a specific project.

<u>Project-Based Costs</u>: A "Project-Based Cost" is the aggregate cost for the completion of a specific work category. The Project-Based Costs describe a level of effort required to perform a certain category of work. Examples of Project-

Based Costs include, but are not limited to, Site Investigation, Initial Site Characterization, and Groundwater Monitoring.

Applicability Of Costs, Recommended Billing Practices & Cost Limitations

Professional & Contracted Labor Costs: For purposes of work scope approval and reimbursement. DES evaluates labor costs based on the budget for each task to determine if costs are reasonable. The total approved budget for each task or class generally governs, verses labor rates, to allow flexibility in the use of personnel resources, provided the labor categories are consistent with standard industry practice. For example, a "Principal" does not normally oversee construction projects, in lieu of a "Supervisor" or "Foreman". A request for additional total time to complete work requires iustification. ln addition. significant variations in billed, verses proposed labor categories, require an explanation.

<u>Limitation on Reimbursement for Project Transition Costs:</u> Reimbursement for project transition costs shall be limited to one consultant transition per project, unless DES grants additional transition approvals in response to a written request from the fund-eligible facility owner or property transferee, as applicable.

15% Limitation on Senior Personnel: Market data indicates that the total hours for Senior Level oversight do not typically exceed 15% of the consultant total project labor hours. Senior Level personnel are typically defined as senior project managers, supervisors and principals.

Per Diem: Reimbursement for per diem (meals and lodging) for site activities requiring more than one day of fieldwork is recommended where there is a net savings in daily travel costs. Reimbursement is limited to actual costs with no markup allowed. Luxury accommodations and travel are excluded.

Mileage: Reimbursement for round trip mileage from office to job site for personal and company vehicles is payable at the prevailing market rate rounded to the next highest cent, for standard and four wheel drive automobiles. Mileage-based reimbursement will be prorated to a daily vehicle use charge if it represents a lower cost for the job. Justification is required for more than one vehicle per trip.

Equipment Downtime, Storage, Repair or Replacement: Excess charges for equipment downtime, storage, or the cost to repair or replace equipment that is damaged, lost or stolen due to negligence or vandalism are not reimbursable.

Equipment Rental or Purchase: The decision to rent or purchase equipment should be based on the option that provides the lowest overall cost for the duration of the project. Generally these considerations apply to "Capital Equipment" as defined in the rules. It is recognized that rental charges reflect purchase cost, maintenance, depreciation, handling and reasonable profit. However, in some instances, the Board and DES may determine that proposed or billed rental charges are not reasonable given acquisition market costs and considerations.

<u>Field Supplies</u>: Several small items are used during cleanup activities. It is very difficult to account for these items that may range in price from \$0.50 to \$5.00 each. For billing ease, composite costs for such items are typically billed at \$25 per day.

Protective Equipment: Level D is adequate for almost all activities at petroleum sites in New Hampshire. Levels A, B and C are rarely used. However, costs to upgrade to higher levels of protective equipment are reimbursable at Table 1A, rates provided DES agrees a higher level is required to adequately protect the health and safety of workers.

Ancillary Costs: There are many small items that should not be charged separately, and are typically considered overhead and are figured into in the billing rates of personnel. These ancillary costs include, but are not limited to, the following: telephone, faxes, postage, computers, CAD computers, software, cellular phones, portable computers, cameras, tool kits, drum dolly, flashlights, miscellaneous hand tools. Ancillary costs are considered inclusive to the Project-Based Costs, and thus are "counted" when DES compares budgeted and actual costs.

Applicability of 10% Markup Allowance: The Board and DES presume that laboratory work, drilling, disposal of contaminated material excavation services, consulting services, etc. are actually "subcontracted", when billed through a prime contractor. That is, a written contract for the services rendered,

was in-place before the work was performed. If so, the 10% markup allowance applies. (The only exception is bid-based work for implementation of an approved Remedial Action Plan, where the 10% markup does not apply.)

The Board and DES presume that materials, supplies, shipping charges, police details, utilities and other ancillary costs are not acquired through a subcontractor. Therefore, the 10% markup allowance does not apply. If a claim is made that such costs are subcontracted, then a copy of the written contract must be provided.

Project-Based Cost Category Descriptions

The following paragraphs describe the tasks or elements included in the scope of work (SOW) for each Project-Based Cost The not-to-exceed category. reimbursement limit for consulting services for each category is listed in Table 2 included in the Appendix.

Level II Site Investigation - This SOW consists of a site safety plan, background research, sensitive receptor survey, site visit to pre-mark boring locations for Dig-Safe, completion of up to 10 soil borings and installation of up to 8 monitoring wells (5 borings/wells minimum, one of which shall be in the source area), soil sampling, 2 complete rounds of groundwater sampling, well elevation survey, slug/bail down testing of up to 3 wells, project management, data review, conceptual model development and report preparation. The cost for this SOW is based on two days of drilling. The report shall meet the requirements of Env-Wm 1403.07.

Level I Site Investigation - This SOW consists of a site safety plan, background research, sensitive receptor survey, site visit to pre-mark boring locations for Dig-Safe, completion of up to 5 soil borings and installation of up to 4 monitoring wells (3 borings/wells minimum, one of which shall be in the source area), soil sampling, 2 complete rounds of groundwater sampling, well elevation survey, project management, data review, conceptual model development and report preparation. The cost for this SOW is based on one day of drilling. The report shall meet the requirements of Env-Wm 1403.07.

Supplemental Site Investigation - This SOW consists of a site visit for Dig-Safe mark-out, site safety plan, completing additional borings and monitoring wells as requested by DES, soil sampling, one complete round of groundwater sampling from all monitoring points, well elevation survey, project management and report. The report shall include a summary of soil and groundwater quality to date, a revised conceptual model, updated groundwater contour map, proposed groundwater management zone and updated contaminant plume map. The cost for this SOW is based on one day of drilling.

Initial Site Characterization - This SOW consists of a site visit for Dig-Safe mark-out, background research, site safety plan, and subsurface investigation including soil and groundwater sampling and report preparation. The report shall meet the requirements of Env-Ws 412.08.

Project Transition - Single Project - This SOW is applicable when there is a change in the consultant for a site/project, and includes the costs for completing a review of DES files,

discussions with the DES project manager, field-verification site visit, preparation of health and safety plan, conceptual model review, historical information review, and site plan

Project Transition - Multiple Projects - This SOW is applicable when there is a change in the consultant for multiple sites/projects, all under the same ownership, and includes the costs for completing a review of DES files, discussions with the DES project manager, field-verification site visit, preparation of health and safety plan, conceptual model review, historical information review, and site plan creation. DES file review, discussions with DES project managers, and other activities may be accomplished concurrently, and the site(s)/project(s) has complex investigative or remedial issues, as determined by DES.

Dissolved-Contaminant Plume/Groundwater Management Zone (GMZ) Delineation - This SOW consists of completing additional monitoring well installations to define the limits of a contaminant plume. The costs included are Dig-Safe mark-out, site safety plan, monitoring well installations, location and elevation survey, one round of groundwater sampling from new monitoring wells, and coordination to update the SI data tables and site figures. The costs for this SOW are based on one day of drilling on or off the site. This effort should be used where an SI or Supplemental SI is in progress, yet additional information is required to delineate the contaminant plume and/or define the GMZ. This effort cannot be performed without DES preapproval.

Groundwater Management Permit Application - This SOW consists of completing a Groundwater Management Permit Application form and providing supporting information. The completed application shall meet the requirements of Env-Wm 1403.13.

Renewal of Groundwater Management Permit - This SOW consists of completing a Renewal of Groundwater Management Permit form and providing supporting information. The cost for this SOW consists of limited hours to update an existing annual summary report.

Groundwater Management Permit Notification to Landowners & Deed Recordation - This SOW consists of providing notification of the Groundwater Management permit by certified mail to all owners of lots of record within the GMZ and submitting documentation to DES. This SOW also includes recording notice of the permit in the registry of deeds in the chain of title for each lot within the GMZ and submitting a copy of the recorded notice to DES. The cost for this SOW is based on notification and recordation for up to 3 lots.

Annual Summary Report- This SOW consists of completing an annual summary report. The annual summary report shall include a tabulated summary of all analytical data collected to date, graphical presentation of trends in the data for representative sample locations, an assessment of the trends in the data, and any recommendations for

remedial action plan or groundwater management permit revisions. The annual report shall include an updated groundwater contour map and contaminant plume map. The report shall meet the requirements of Env-Wm 1403.13(f).

One Round of Groundwater Monitoring - This SOW consists of groundwater and/or drinking water sampling and reporting as requested by DES. The data submittal shall include a tabulated summary of analytical results, a revised site plan, groundwater elevation data, and lab data sheets. The cost for this SOW is based on the number of wells where samples are collected, including monitoring well, surface water and drinking water points. This SOW and cost is also applicable for (minor) product recovery performed during routine monitoring events, where no sample is collected.

One Round of Groundwater Monitoring Increments -Incremental cost increases to the one round SOW, are allowed for greater than five wells on a per-well basis, and for off-site private water supply sampling. increments, where required, include a wellhead elevation re-survey, and one round requiring a second day. The wellhead elevation re-survey increment includes coordination, fieldwork, calculations, and data tabulation for competing a re-survey of wellheads on the next sample round following a repair event. The one round requiring a second day increment, includes mob/demob, travel, equipment rental and transportation costs for sites where a second field day is needed.

MW Decommissioning Or Road Box Replacement Coordination - This SOW consists of consultant time to secure the services of a service provider to complete monitoring well decommissioning or road box replacement.

Free Product Recovery - This SOW consists of completing six site visits at the frequency requested by DES (typically monthly) to recover free product using bailing or adsorbents, recovery materials and supplies, coordinating product disposal, and submittal of a brief letter report. The report shall include water and product levels, product thickness and amount recovered (estimates acceptable when using adsorbents). Disposal costs for recovered product shall be at prevailing market rates, but shall not exceed the costs listed in this guideline. The cost for this SOW is based on six days in the field.

Enhanced Fluid Recovery - This SOW consists of completing one site visit to recover free product using a Fluid recovery shall be completed at vacuum truck. specified wells containing free product using a vacuum truck. The letter report shall include water and product levels, amount of product/liquids recovered from each well and observed product recharge in each well. The cost for this SOW is based on consultant costs and subcontracted vacuum truck and operator costs. Disposal costs for fluids recovered would be at prevailing market rates, but shall not exceed the costs listed in this guideline.

Soil Excavation and Disposal Plans and Bid Specifications This SOW consists of preparing site-specific soil excavation and disposal plans and bid specifications using the DES example specification as a template. Review and approval of bid specifications is required prior to soliciting bids.

Bid Administration - This SOW consists of soliciting a minimum of 3 bids, conducting the bid opening, and submitting a tabulation of the bid results to DES with a recommendation for award. The cost for this SOW includes conducting a site meeting with prospective bidders.

Soil Delineation Sampling and Increment - This SOW consists of completing soil sampling to characterize the nature and extent of soil contamination including in-situ disposal characterization sampling. Tasks included in this SOW include dig-safe mark-out, completion of soil borings or test pits, collection of soil samples for extent and disposal characterization analysis in accordance with DES and receiving facility requirements (for VPC soils this typically includes VOC, TPH and ignitability), and report completion. The report shall include a site sketch showing sample locations, location of release, lateral limits of contamination, calculations estimating the amount of contaminant mass and quantity of soil (in tons) exceeding DES standards. PID data, copies of laboratory data, boring or test pit logs and recommendations. The cost for this SOW is based on one day of soil borings or test pits. An incremental cost increase is allowed for soil delineation sampling that requires a second day of fieldwork.

Residential Indoor Air Sampling - This SOW consists of completing a pre-sampling inspection conducted a minimum of 24 hours prior to sampling, collection of 3 fourhour time integrated indoor air samples, one each from the basement, first floor living space and an outdoor (ambient) sample and submittal of data to DES. The data submittal shall include copies of laboratory data, reported in units of micrograms per meter cubed, and the completed Residential Indoor Air Sampling Form.

Sub-Slab Source Characterization for Residential OPUF -This SOW consists of completing corings through the concrete floor to obtain soil samples, screen soils with a PID, submit soil samples for laboratory analysis as directed by DES, seal core holes and complete a data submittal. The data submittal shall include a sketch showing sample locations, PID data and copies of laboratory data. The cost for this SOW is based on one day of fieldwork and includes any subcontracted coring services.

Groundwater Quality Assessment for Residential OPUF This SOW consists of completing a site visit for Dig-Safe mark-out, site safety plan and the following or as otherwise directed by DES: Install up to 3 monitoring wells, (one well at a minimum to be installed as close as possible to the source area in the presumed down gradient direction). collect one round of groundwater sample(s), collect one source area soil sample, complete a well elevation survey (if all 3 wells are installed) and submit data results to DES. The data submittal shall include a site sketch showing sample locations and the location of the release, PID data and copies of laboratory data. The cost for this SOW is based on one day of drilling. Should the DES request additional sampling round(s) the one-round of groundwater monitoring task listed above may be used.

NPDES (EPA) Exclusion Form – This SOW consists of completing the application form from the U.S. Environmental Protection Agency (EPA) pursuant to the National Pollutant Discharge Elimination System (NPDES) to provide an exclusion for a surface water discharge permit pursuant to 40 CFR 122.3 (d). The costs include all labor, travel, supplies and services for completing the application, providing a site map and analytical sampling results to EPA Region I, and responding to EPA comments and requests to obtain their approval.

NHDES Temporary Surface Water Discharge Permit - This SOW consists of completing the necessary forms from the NHDES pursuant to RSA 485 (a) (13) to obtain a permit for discharging treated water to surface water.

The costs include all labor, travel, supplies and services for completing the application, providing a site map and analytical sampling results to DES, and responding to DES comments and requests to obtain the permit.

Off-Site Access Agreement – This SOW consists of obtaining a site access agreement for an off-site property to perform required cleanup activities. The cost for this SOW is based on two attempts to obtain a written access agreement. DES shall be notified immediately upon failure to obtain a signed agreement. The cost for this SOW does not include attorney fees, as those costs are not eligible for reimbursement.

<u>Dig-Safe Pre-Marking</u> - This SOW consists of conducting a site visit and pre-marking boring/well and/or excavation locations as required by Dig-Safe.

<u>Initial Response Action Reporting Form</u> – This SOW consists of completing the Initial Response Action Report Form and providing supporting information. The submittal shall document response actions conducted and shall include a site sketch and any applicable attachments such as laboratory data, bills of lading for soil disposal, and site photos.

Initial Response Action Report - Complex Site - This SOW consists of completing the Initial Response Action Report Form and providing supporting information listed above, and additional correspondence or a brief report providing data interpretation and recommendations for additional work. This SOW is applicable for sites/projects where groundwater impacts are known, potential third-party impacts are anticipated, or the site occupants may be at risk, as determined by DES.

<u>OPUF Mobilization/Demobilization</u> - This SOW covers the costs for transporting personnel, equipment, supplies and materials to the job location. It also includes a site visit and

Dig-Safe mark-outs. The lump sum amount applies to all preparation and support for a typical fuel remediation effort that does not exceed 5 working days.

OPUF Exterior Soil Excavation – This SOW covers 1 day of oil-contaminated soil excavation and includes labor, equipment, supplies, materials, and PPE. The DES Initial Response (IR) manager shall approve the appropriate number of excavation days. The not-to-exceed limit applies to all exterior soil excavation for a typical fuel remediation effort that does not exceed a total of 5 working days for excavation and backfill/restoration.

OPUF Exterior Backfill and Site Restoration – This SOW covers 1 day of backfilling the excavation and restoring the work areas to the original condition including labor, equipment, supplies, materials, and PPE. The DES IR manager shall approve the appropriate number of backfilling days. The not-to-exceed limit applies to all exterior backfill and site restoration for a typical fuel remediation effort that does not exceed a total 5 working days for excavation and backfill/restoration. The backfill materials costs will be approved at the Unit-Based Cost.

<u>OPUF Interior Soil Excavation</u> – This SOW covers 1 day of oil-contaminated soil excavation under a structure or mobile home and includes labor, equipment, supplies, materials and PPE. The cost to exhaust fuel vapors is included for a week. The DES IR manager shall approve the appropriate number of excavation days. The not-to-exceed limit applies to all interior soil excavation for a typical fuel remediation effort that does not exceed a total of 5 working days for excavation and backfill/restoration.

OPUF Interior Backfill and Site Restoration – This SOW covers 1 day of backfilling the excavation and restoring the work areas to the original condition including labor, equipment, supplies materials, and PPE. The DES IR manager shall approve the appropriate number of backfilling days. The not-to-exceed limit applies to all interior backfill and site restoration for a typical fuel remediation effort that does not exceed a total 5 working days for excavation and backfill/restoration. The backfill materials costs will be approved at the Unit-Based Costs.

OPUF Contaminated Soil Load and Transport (Live Load) This SOW covers the loading and transport costs for off-site disposal of oil-contaminated soil. This effort is conducted in conjunction with the OPUF excavation and backfilling operations but does not need to be completed within the 5 working day period. The costs include all labor, supplies, materials, and equipment to direct load or load from a contaminated-soil stockpile into dump trucks/trailers for immediate transport to a disposal facility. The DES IR manager shall approve the appropriate number of live load and transport days appropriate for the soil volume removed.

OPUF Contaminated Soil Load and Transport (Roll-Off Cans) – This SOW covers the loading and transport costs for off-site disposal of oil-contaminated soil. This effort is

conducted in conjunction with the OPUF excavation and backfilling operations but does not need to be completed within the 5 working day period. The costs include all labor, supplies, materials, and equipment to deliver and stage roll-off containers, load contaminated soil into the roll-off containers, and transport to a disposal facility. The DES IR manager shall approve the number of roll-off load and transport days appropriate for the soil volume removed.

OPUF Contaminated Soil Load and Transport (Vactor) -This SOW covers the loading and vactor-related transport costs for off-site disposal of oil-contaminated soil. This effort is generally conducted in conjunction with the OPUF interior excavation and backfilling operations but does not need to be completed within the 5 working day period. The costs include all labor, supplies, materials and equipment to use a vactor vehicle to remove contaminated soil/stone and transport the contained material to a disposal facility. The DES IR manager shall approve the number of vactor days appropriate for the soil volume to be removed.

Structural Engineering Assessment - This SOW covers a structural inspection and rendering of a professional opinion on the structural integrity in terms of excavation of contaminated soil from around or under the foundation. The cost includes labor, travel, instruments, PPE, photos and expenses to provide a written assessment document prior to excavation of oil-contaminated soil from around or under the foundation of the structure. A Professional Engineer with structural engineering design experience shall sign the assessment document.

Environmental Monitoring At Contaminated Soil Excavation Projects – This SOW provides for environmental monitoring by a consultant to assess the adequacy of the contaminated-soil removal based on observations, instrument readings, and collection of representative samples. The costs include all labor, travel, instruments, PPE, photos, lab coordination, equipment, supplies, materials, and expenses to oversee and monitor the excavation of contaminated-soil. The coordination with an analytical laboratory on the environmental samples will include sample preservation and delivery, chain-of-custody documentation, receipt and submission of analytical results to DES.

POE Site Evaluation – This SOW consists of performing a site visit and required sampling and analysis to determine point-of-entry (POE) treatment adequate installation requirements. Lab analysis may include bacteria, radon, hardness, pH and inorganics. submittal shall include proposed system components and analytical data. The cost for this SOW includes all labor, sampling equipment, expendable supplies, mileage, and laboratory fees.

POE Installation Coordination - This SOW is for consultant coordination of POE installations, when required, including an initial site visit and client, contractor and third-party communications. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

POE Maintenance Coordination - This SOW consists of consultant time to coordinate the services of a POE service provider for maintenance events.

POE Installation (4 cubic feet) - This SOW consists of providing and installing two 2cubic foot granular activated carbon (GAC) units in series including sampling taps, valves and plumbing materials. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

POE Installation (6 cubic feet) - This SOW consists of providing and installing two 3-cubic foot GAC units in series including sampling taps, valves and plumbing materials. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

POE Installation (8 cubic feet) - This SOW consists of providing and installing two 4cubic foot GAC units in series including sampling taps, valves and plumbing materials. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

Residential Air Stripper Pretreatment Add-on - This SOW consists of providing and installing a residential air stripper, flow controls, valves, exterior vent stack and plumbing materials for pretreatment prior to carbon treatment. The cost for this SOW includes all labor, equipment and expendable supplies.

Water Softener Pretreatment Add-on - This SOW consists of providing and installing a water softener, timer control, bypass valves and plumbing materials for pretreatment prior to carbon treatment. The cost for this SOW includes all labor, equipment and expendable supplies. These units are appropriate if iron, manganese or hardness need to be removed prior to carbon treatment. Secondary drinking water standards shall be used to determine if pre-treatment is required.

Iron Filter or Neutralizer Pretreatment Add-on - This SOW consists of providing and installing a filter or neutralizer for ferric iron content, valves and plumbing materials for pretreatment prior to carbon treatment. The cost for this SOW includes all labor, equipment and expendable These units are appropriate if iron and manganese need to be removed prior to carbon treatment. Secondary drinking water standards shall be used to determine if pre-treatment is required.

POE Annual O&M visit - This SOW consists of performing an annual site visit and conducting necessary POE system repairs and routine maintenance. The cost for this SOW includes all labor, expendable supplies, mileage and any subcontracted services.

POE Carbon Change Out - This SOW consists of performing POE carbon change out as required based on calculations or actual break through. The cost for this SOW includes all labor, expendable supplies, mileage, new carbon and disposal or reactivation of spent carbon and any subcontracted services. The cost for this SOW is based on 4 cu. ft. of carbon.

N.H. PETROLEUM STORAGE FACILITY FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS <u>Table 1. Unit-Based Costs</u>



Leaking OPUF Tank Pump Out (1)	\$200 per tank
Meters – Detectors	Daily
Photoionization detector (PID)	\$90
Flameionization detector (FID)	\$90
Water level meter	\$15
Interface probe	\$25
Low flow sampling system	\$175
pH, Conductivity and Temperature meter	\$20
Dissolved Oxygen meter	\$30
Metal detector	\$15

(1) This cost covers labor and materials to pump out a *visibly leaking* heating oil storage tank - only. If an OPUF must be temporarily relocated to conduct corrective action, a time & materials budget must be pre-approved. This can be included as an add-on to the OPUF 5-Day form.

Laboratory Analysis	Each
Soil/Solids	
VOC Full List (w/trip blank)	\$160
VOC Short List (w/trip blank)	\$140
8270B or 8310 (PAH)	\$150
8015 DRO or GRO (TPH)	\$90
Ignitability (1010)	\$35
VOC/TPH/Ignitability (for VPC soil disposal characterization)	\$250
VOC/TPH/PAH	\$350
VOC/TPH	\$225
TCLP Metals (8 RCRA) and prep time	\$200
Groundwater/Drinking water	
VOC Full List (w/trip blank)	\$160
VOC Short List (w/trip blank)	\$140
8270B (PAH)	\$150
8021B BTEX, MTBE and/or Naphthalene	\$100
Alkalinity	\$15
Dissolved Metals (each)	\$15
Metals sample preparation charge	\$10
Methane	\$90
Nitrate	\$15
Sulfate	\$15
Total Organic Carbon (TOC)	\$50
Indoor Air	
EPA Method TO-14, Canister sampling for BTEX, MTBE and/or Naphthalene	\$250

Drilling	Rate
Mobilization/demobilization (installation or	\$150 lump sum
decommission)	per job
Drill rig (hollow stem auger) with 2-man crew	\$1,200 per day
Well materials	\$10 per ft
8" Flush mount protective casing	\$75 ea
Steam cleaner	\$75 per day
Air Hammer Attachment + Compressor	\$250 per day
Geoprobe/Direct Push Rig with operator	\$1,000 per day
Geoprobe well points	\$25 each
Road Box Replacement (from 1 to 3 wells)	\$200 per well
Road Box Replacement (from 4 to 6 wells)	\$175 per well
Well Decommissioning 2-inch PVC	\$8 per foot
Compression or "J " Plugs	\$12 ea
Grout Pump	\$300 per day

Sampling Equipment and Supplies	Daily	Other
Data Logger Pressure Transducer	\$100	
Disposable bailers		\$10 ea
Encore TM sample container for use with sampling Method		\$8 ea
Field Supplies	\$25	
Groundwater sampling filter		\$20 ea
Groundwater sampling pump	\$40	
Hand auger	\$15	
Level, tripod, rod/prism, tape/chain	\$40	
Multi Channel Data Logger	\$250	
Transit, tripod, rod/prism, tape/chain	\$80	
Geoprobe core sample liners		\$8 ea

Soil Excavation & Transportation (2)	Unit	Rate
Soil excavation, backfill, & live load	CY	\$8 - \$23
Soil loading - remobilized to site	Ton	\$5
Soil transportation	Ton	\$5 - \$8

(2) This sub-table may apply to specific circumstances, e.g., UST/AST closure projects where mobilization has occurred, and/or when transportation can be provided by the disposal facility. Rates may vary due to size of excavation and transport distances.

Fill Materials/Restoration (3)	Unit	Rate
Common backfill	Ton	\$7 - \$12
Gravel/Crushed stone	Ton	\$10 - \$16
Loam	Ton	\$22
Grass seed	Pound	\$7

(3) Rates may vary due to size of excavation and transport distances.

Product & Soil Disposal	Unit	Rate
Bulk Liquid Disposal (gasoline, <500 gallons)	Gallon	\$1.75
Bulk Liquid Disposal (gasoline, 500-1000 gallons)	Gallon	\$1.50
Bulk Liquid Disposal (gasoline, >1000 gallons)	Gallon	\$1.20
Bulk Liquid Disposal (fuel oil)	Gallon	\$0.50
Drum Disposal (gas mixture 3 drums or less)	Drum	\$250
Drum Disposal (fuel oil mixture 3 drums or less)	Drum	\$125
Drummed soil	Drum	\$125
Soil Treatment - Thermal or Asphalt Batching	Ton	\$30
Soil Disposal - Landfill	Ton	\$55
Oil-Contaminated Debris - Bagged for Incineration	Bag	\$30
Oil-Contaminated Debris & Soil Mixtures - Landfill	Ton	\$70

N.H. PETROLEUM STORAGE FACILITY FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS <u>Table 1A. Unit-Based Costs</u>



Personnel	Unit	Rate
Site Supervisor	Hour	\$65.00
Foreman	Hour	\$55.00
Technician	Hour	\$45.00
Equipment Operator	Hour	\$50.00
Labor premium for Level A PPE	Half-day/person	\$100.00
Labor premium for Level B PPE	Half-day/person	\$60.00
Labor premium for Level C PPE	Half-day/person	\$25.00
Labor premium for Level D PPE	Day/person	\$25.00
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Light Vehicles	Unit	Rate
Fully equipped Emergency Response Van	Half-Day	\$125.00
Rack Truck	Half-Day	\$125.00
Automobiles, 2-wheel and 4-wheel drive	Mile	\$0.35
Pickup Truck or Van	Half-Day	\$62.50

Unit	Rate
Half-Day	\$150.00
Half-Day	\$120.00
Half-Day	\$200.00
Hour	\$65.00
Hour	\$100.00
Foot	\$2.25
Hour	\$75.00
Hour	\$65.00
Half-Day	\$100.00
Half-Day	\$150.00
	Half-Day Half-Day Half-Day Hour Hour Foot Hour Hour Hour Hour

Marine	Unit	Rate
Row Boat	Half-Day	\$40.00
Power Boat, up to 16 foot	Half-Day	\$200.00
Power Boat, 16 to 18 foot	Half-Day	\$250.00
Power Boat, 18 to 22 foot	Half-Day	\$300.00

Excavating & Loading	Unit	Rate
Backhoe	Half-Day	\$250.00
Excavator - Mini	Half-Day	\$200.00
Excavator - 150 type	Half-Day	\$320.00
Loader - Bobcat type	Half-Day	\$150.00
Loader - 3 cy	Half-Day	\$400.00
Excavator - PC 300 type	Half-Day	\$500.00
Barrel Crusher, Backhoe mounted	Half-Day	\$100.00
Barrel Grabber, backhoe mounted	Half-Day	\$75.00

Containers	Unit	Rate
Storage tank (1,000-gallon)	Half-Day	\$15.00
Roll-Off Container, 10 c.y.	Half-Day	\$12.00
Roll-Off Container, 20 c.y.	Half-Day	\$12.00
Roll-Off Container 30 c.y.	Half-Day	\$12.00
Roll-Off liner, all sizes	Each	\$60
Drums, Type 17E, closed head	Each	\$22.50
Drum - 55 gallon 17H open head	Each	\$35.00
Drums, 25M, poly, 55 gallon	Each	\$35.00
Drums, 17E, poly, 30 gallon	Each	\$35.00
Drums, 17H, poly, 30 gallon	Each	\$35.00
Overpack drums, Steel, 80 gallon	Each	\$72.50
Overpack drums, Poly-Bondico 90 gallon	Each	\$148.50
		•

Pumps	Unit	Rate
Drum vacuum pump	Half-Day	\$35.00
Pump, pneumatic diaphragm, 1-1/2 inch to 3 inch discharge	Half-Day	\$45.00
Pump, electric centrifugal, 1-1/2 inch to 3 inch discharge	Half-Day	\$40.00
Pump, skimmer	Half-Day	\$30.00
Pump, sludge	Half-Day	\$100.00

Tools & Equipment	Unit	Rate
Blower/exhaust fan, explosion proof 5,000 CFM	Half-Day	\$30.00
Blower/exhaust fan, explosion proof 5,000 CFM	Week	\$150.00
Blower/exhaust fan, explosion proof 1,570 CFM	Half-Day	\$15.00
Blower/exhaust fan, explosion proof 1,570 CFM	Week	\$90.00
Compactor - walk behind 20 x 28" vibrating plate type	Half-Day	\$50.00
Compactor – 1-ton walk behind double drum type	Half-Day	\$100.00
Compressor 125/175 psi	Half-Day	\$60.00
Concrete saw with blade	Day	\$300.00
Concrete corer - 6" to 8" diameter	Half-Day	\$75.00
Generator, up to 5000 watt	Half-Day	\$60.00
Jackhammer with bit and hose	Half-Day	\$40.00
Skimmer - Duckbill, Slurp, Swiss	Half-Day	\$25.00
Water Blaster – up to 3,000 psi	Half-Day	\$45.00
Steam Cleaner – 800 psi	Half-Day	\$55.00
Reciprocating saw, electric or pneumatic	Half-Day	\$25.00
Light tower w/generator	Half-day	\$100.00
Portable floodlight	Half-day	\$25.00
Chain Saw, gas or electric, all sizes	Half-Day	\$30.00
All powered hand tools	Half-Day for all	\$30.00

Absorbents, Cleaning, & Containment	Unit	Rate
6 mil poly roll 100'x20'	Each	\$90.00
Containment boom, up to 18"	Foot	\$1.25
Containment boom, 24"	Foot	\$1.50
Sorbent pads, 18"x18"x3/16", 200 per bale	Bale	\$85.00
Sorbent boom 10'x8" diam., 4 per bale	Bale	\$180.00
Oil Snares, 30 units/box	Вох	\$45.00
Speedi-dry, 50lb. bag	Bag	\$5.75
Polyethylene bags, 38" x 60" 4 mil, 50/case	Case	\$47.50
Polyethylene bags, 38" x 60", 4 mill, roll of 100	Roll	\$100
Degreasers	Gallon	\$50.00

See Notes On Reverse Side That Accompany Tables 1. & 1A.

Notes To Unit-Based Cost Tables

Vehicles, Heavy Equipment, Misc. Equipment & Supplies

Table 1A. costs are for equipment in good mechanical condition, complete as required with attachments, tools, hoses, cables, bits, blades, buckets, hooks, fuel, tires, lubricants, etc. Maintenance, cleaning, repairs, insurance, security, depreciation, and overhead and administrative costs are also included. Equipment rates include all costs for equipment operation exclusive of the operator, unless otherwise

Laboratory Analysis

The costs shown include all charges for laboratory analysis, including sample preparation and disposal, unless otherwise specified.

Standard turnaround time is normally 5 to 14 days depending on the laboratory and their current workload. Rush charges may be incurred when analytical results are requested within 24 hours. Rush charges usually amount to 50% to 100% surcharge upon the standard price. Rush charges must be pre-approved by DES as necessary, due to emergency health or environmental issues, or result in a net cost savings. Reimbursement shall be based on actual (subcontractor) invoiced costs, but shall not exceed the listed rates plus allowable 10% subcontractor markup.

Trip blanks for VOC analysis shall be reimbursable at the listed rates. If the trip bank analysis cost is not included as part of the VOC price, the PMR is \$150.00 for long list VOC analysis and \$130 for short list VOC analysis.

DES does not typically require field blanks. The cost for field blanks will not be reimbursed unless pre-approved by DES. (Contact the assigned DES Project Manager for project-specific guidance.)

For laboratory rates, package pricing shall be used where multiple analyses are completed for the same soil samples.

Shipping costs may be extra for EPA Method TO-14.

<u>Drilling</u>

The costs shown are for hollow stem auger drilling work and include labor, equipment in good mechanical condition complete as required with tools, hoses, fuel, tires, lubricants etc. Maintenance, cleaning, repairs, insurance, security, depreciation, overhead and profit, and administrative costs are also included.

Mobilization/demobilization charges are highly dependent on the distance to the job site. Additional costs would be considered if in-state travel distance is greater than 80 miles one-way.

Costs for drilling into bedrock for monitoring well installations will require submittal of a site-specific work scope for DES approval.

Well materials are for a 2"- PVC monitoring well including all materials required for installation with the exception of the protective casing, which is listed separately.

The contractor or supporting subcontractor invoice(s) shall be considered the deliverable for road box replacement and well decommissioning provided the invoice(s) includes a clear description of the work performed and the dates on which it was performed.

Road box replacement cost is based on an 8-inch flush mounted road box and includes all labor, equipment, and expendable supplies.

MW decommissioning cost is based on completing work in accordance with Env-Wm 1403.27, and includes all labor, equipment, and expendable supplies.

Soil Disposal

Soil disposal/treatment costs are based on certified virgin petroleum contaminated soils.

A conversion factor of 1.5 tons per cubic yard is assumed reasonable when scales are not available.

Leaking OPUF Tank Pump Out and Relocation

The contractor or supporting subcontractor invoice(s) shall be considered the deliverable for this work provided the invoice(s) includes a clear description of the work performed and the dates on which it was The cost shown includes all labor, equipment and expendable supplies to remove stored fuel oil from the on-premise-use fuel oil storage tank and relocating the same tank to supply the dwelling with oil, and reconnecting the tank to a temporary or new fuel distribution system until the soil remediation is completed.

N.H. PETROLEUM STORAGE FACILITY FUND PROGRAM UNIT-BASED AND PROJECT-BASED COSTS <u>Table 2. Project-Based Costs</u>



Oil Fund Disbursement Board

Work Category - Investigation, Remedial Action, Or GW Monitoring	Not-To-Exceed Consultant Budget
Level II Site Investigation	\$12,000
Level I Site Investigation	\$8,000
Supplemental Site Investigation	\$5,200
Initial Site Characterization	\$4,500
Project Transition - Single Project	\$1,250
Project Transition - Multiple Projects	\$1,000
Dissolved-Contaminant Plume /GMZ Delineation	\$4,000
Groundwater Management Permit Application	\$2,000
Renewal of Groundwater Management Permit	\$700
Groundwater Management Permit, Notification to landowners and Deed Recordation	\$1,000
Annual Summary Report	\$1,500
One Round of Groundwater Monitoring [1-5 MWs]	\$1,000
+ Wellhead Elevation Re-Survey	\$415
+ One Round Requiring Second Day	\$350
+ Additional Groundwater Monitoring (same round)[6-10 MWs]	\$120 ea well
+ Additional Groundwater Monitoring (same round)[> 10 MWs]	\$100 ea well
+ Off-Site Private Water Supply Sampling (initial event)	\$500 per PWS
+Off-site Private Water Supply Sampling - 2nd round	\$250 per PWS
MW Decommission or Road Box Replacement Coordination	\$250
Free Product Recovery	\$3,500
Enhanced Fluid Recovery	\$3,000
Soil Excavation Plans & Bid Specifications	\$2,000
Bid Administration	\$1,000
Soil Delineation Sampling	\$3,000
+ Additional Day of Fieldwork	\$1,500
Residential Indoor Air Sampling	\$2,000
Sub-slab Source Investigation for Residential OPUF	\$2,000
Groundwater Quality Assessment for Residential OPUF	\$2,800
NPDES (EPA) Exclusion Form	\$550
NHDES Temporary Surface Water Discharge Permit	\$750
Off-site Access Agreements	\$400
Dig Safe Pre-Marking	\$400
Initial Response Action Report Standard Form	\$500
Initial Response Action Report - Complex Site	\$1,000

Work Category - OPUF Contaminated Soil Excavation And Restoration, 5 Days Or Less In Duration	Not-To-Exceed Budget
Mobilization/Demobilization, incl.Site Visit + Dig Safe	\$1,500 lump sum
Exterior Soil Excavation	\$2,775 per day
Exterior Backfill and Site Restoration	\$1,900 per day
Interior Soil Excavation (under floor or mobile home)	\$2,400 per day
Interior Backfill and Site Restoration	\$2,335 per day
Contaminated Soil Load & Transport - Live Load	\$1,900 per day
Contaminated Soil Load & Transport - Roll-Off Cans	\$1,065 per day
Contaminated Soil Load & Transport - Vactor Truck	\$1,725 per day
Structural Engineering Assessment	\$1,200 per job

Work Category - Environmental Monitoring At	\$850 per day
Contaminated Soil Excavation Projects	\$650 per day

Work Category - POE System Installation & Maintenance	Not-To-Exceed Budget
POE Site Evaluation	\$550 per site
+ POE Installation Coordination	\$410 per site
POE Maintenance Coordination	\$150 per event
POE Annual O&M	\$600 per system
POE Carbon Changeout	\$1,600 per system
POE Carbon Installation (4 CF)	\$3,200 per system
POE Carbon Installation (6 CF)	\$4,000 per system
POE Carbon Installation (8 CF)	\$4,800 per system
POE Pretreatment: Water Softener	\$1,800 per system
POE Pretreatment: Air Stripper	\$5,200 per system
POE Pretreatment: Iron Filter or Neutralizer	\$1,800 per system

See Notes On Reverse Side That Accompany
This Table, And The Project-Based Work Descriptions

Notes To Table 2. Project-Based Costs

The Project-Based Cost categories are **NOT-TO-EXCEED** budgets and include all labor, materials and equipment costs to complete the various work categories, with the exception of certain subcontractor costs as specified in the descriptions. Laboratory and drilling costs will be reimbursed based on actual subcontractor invoices, but shall not exceed the listed Unit-Based Costs. DES expects that charged expenses will reflect the actual level-of-effort to complete the work. Please note that reimbursable subcontractor markup (10%) is not included in the listed costs.

DES will specify whether a Level I or Level II Site Investigation scope should be followed when issuing a site investigation request. A Level I Site Investigation is usually appropriate for projects where it appears likely the petroleum discharge has produced a minimal impact to groundwater.

For monitoring well or private water supply well sampling, each additional well cost increment includes prep time, travel, sampling and reporting.

The cost for an initial private water supply sampling event assumes collection from a faucet and includes coordination, access, travel, sampling and reporting.

For OPUF 5-Day excavation projects, backfill and soil disposal costs are listed under the Unit-Based Costs.

For POE site evaluation, O&M, and carbon changeout, the contractor or supporting subcontractor invoice(s) shall be considered the deliverable for these tasks provided the invoice includes a clear description of the work performed and the dates on which it was performed.

POE Pretreatment Units are add-on units to a granular activated carbon (GAC) treatment system and are used to cleanse raw water and prolong the useful-life of the GAC system.

<u>SECTION VII – HOW-TO OBTAIN FUND PROGRAM COVERAGE & SUBMIT A</u> REIMBURSEMENT REQUEST

How Can I Secure Fund Program Coverage?

- Owners of regulated UST and AST facilities should achieve substantial compliance with operational rules and then maintain substantial compliance, or permanently close a non-compliant facility.
- Owners of residential fuel oil facilities should contact their fuel oil dealer to request an inspection, or otherwise verify that the system is sound. DES strongly recommends that buried fuel oil lines in direct contact with the ground be replaced.
- Facility owners should review their insurance policies and determine if there is pollution coverage, and the coverage limits.
- Facility owners should know that, under state statute, any person who causes or suffers a petroleum release has a duty to report the incident to DES immediately. A reportable release(s) is (1) any release impacting the waters of the state, or (2) any release on land, unless under 25 gallons and immediately contained and cleaned up.

I Have A Petroleum Release At My Fund-Qualifying Facility Or Fund-Qualifying Property – What Do I Do?

Report to DES.

- Hire a corrective action service provider(s).
- Contact your insurer and specifically request if coverage is available for any corrective action costs that may be incurred. Submit a copy of the insurance company reply. If there is no private insurance policy in force, submit a notarized letter stating so.
- Correct any facility compliance deficiencies.

DES Has Requested Corrective Action & I Don't Have Insurance Or My Own Funds.

<u>Program Note:</u> Proof of payment for invoiced costs is not required.

Many corrective action service providers will work as an Applicant to the fund program for direct payment. If you are an on-premise-use facility owner, you will have to pay \$100 to the service provider for the fund program deductible. If you are an owner of a regulated UST or AST facility, you will receive a bill for your fund program deductible after the Applicant for the receives payment reimbursement request. If you cannot pay the fund program deductible within 30 days of invoice receipt, due to financial hardship, you may propose a payment plan to the Board. Contact DES for guidance and payment plan approval criteria.

I Have Incurred Corrective Action Costs, & Have Limited Insurance Coverage.

If you have limited private insurance coverage you must submit invoices to vour insurer until the limits of coverage If your insurer denies are reached. payment of any costs as, not payable within the limits of coverage, you may not submit these denied costs to the state fund program. You may also not submit costs to the state fund program that are included under the limits of private insurance coverage, but are subject to a private insurance deductible. However, you may use private insurance specifically to cover the costs of state fund program UST or AST facility deductibles.

When the limits of coverage under private insurance are reached, the state fund program is available and a qualifying facility owner, Property Transferee, or an Applicant, may submit reimbursement requests.

What Does A Complete Fund Program Reimbursement Request Submittal Include? (Tip: This Checklist Is In The Binder Pocket. Photocopy for re-use.)

- ☐ A Cover Letter. (See example in the Appendix.)
- A completed Request For Reimbursement Authorization form found in the Appendix. The form is needed for the first reimbursement request submitted by a facility owner or Property Transferee. If fund eligibility is transferred, a form is needed for the first request from the new owner.

- ☐ Property transfer deed and amended facility registration form for the first request from a Property Transferee.
- ☐ Facility compliance information, if applicable.
- ☐ Complete information on payment(s) received from private insurance, including a statement explaining the coverage limits, a letter denying coverage, or a notarized statement for un-insured properties.
- ☐ A summary (listing) of invoiced expenses. (See example format in the Appendix.)
- ☐ Copies of invoices from all contractors and their sub-contractors. Invoices must be directed to the facility owner or Property Transferee, including a request submitted by an Applicant. Invoices cannot be directed to DES.
- Copies of all corrective action reports/documentation related to the invoiced costs, if not previously submitted.
- A copy of the services contract between the facility owner or Property Transferee and the Applicant, if applicable.
- A copy of the work scope, change order or DES corrective action request letter applicable to the request, or contractor daily work logs for "emergency services".

- Employee wage, benefits, and equipment operating cost data for corrective action performed by a facility owner or Property Transferee.
- A written explanation and request for overage payment if an approved budget was exceeded.

I Do Not Have All The Required Documentation Or Approvals

A waiver request may be submitted following the formats provided in the Appendix to address:

- Out-of-scope work;
- Indemnification agreements between current and former active facility owners; and
- Backfill weight data and excess backfill quantities;

Waivers may also be sought for missing documentation. e.g., subcontractor invoices, late registration of an AST facility, or other provisions of the program rules. DES has delegated authority to process waiver requests for current/former owner indemnification agreements and when backfill weight data is not available. All other waiver requests must be submitted to the Board for consideration. The Board cannot waive any rule that would constitute a waiver of a statute. Contact DES for guidance concerning waiver requests.

What Happens When A Reimbursement Request Is Submitted To DES?

If a reimbursement request is not substantially complete, it may be returned to the sender, or held until completed. Typically, DES personnel will telephone to request additional information to complete a request. If complete, the request is logged into a database for tracking and If DES records indicate reporting. petroleum storage facility substantial compliance was not achieved, the request is held pending verification of compliance. If the petroleum storage facility is in compliance the request is assigned to a project manager for review.

The project manager will review the request to determine if the costs are reimbursable under Board rules and policies, verify that the corrective action was performed, and verify that acceptable reports were provided by the contractor or consultant.

How Long Does It Take To Process A Reimbursement Request?

Reimbursement requests are reviewed on a first-in, first-out basis, in consideration of the priority status of the project as determined by DES. The time required for login, project database manager assignment, and review to determine reimbursable costs, is typically between 45 and 60 days. The Board must approve all requests in excess of \$50,000, and most requests requiring waivers. When a request is approved DES issues a Notice of Reimbursement (NOR) and payment from the State Treasurer occurs in 15 -20 The NOR includes detailed information on the amount of the current

reimbursement request, the amount payable for the current request, the total amount of reimbursable (a.k.a. eligible) costs to date, the deductible amount, a listing of costs for each current invoice, and comments regarding reimbursable cost deductions, if any.

Can Additional Information Be Submitted After A Reimbursement Request Is Processed?

Yes. A re-submittal of a processed request should include: (1) a cover letter explaining the basis of the re-submittal, (2) a copy of the NOR with the specific identified for invoices reconsideration is sought, and (3) any additional supporting documentation that was omitted from the original submittal. However, DES encourages persons submitting reimbursement requests to provide complete documentation in the first instance, and avoid re-submittals. Resubmittals are also considered on a firstin, first-out basis.

Is There Any Limit To The Number Of Reimbursement Requests That May Be Submitted?

No. As long as corrective action is necessary and costs are being incurred to bring the project to regulatory closure, reimbursement requests may be submitted. However, a reasonable limit on the number of reimbursement submittals for on-going work is one per month.

How Do I Prepare & Submit A Reimbursement Request?

Three alternatives are available for the preparation of reimbursement requests. A

request may be prepared and submitted by the facility owner, landowner, or Property Transferee, or a corrective action service provider (on behalf of an owner or Property Transferee), or by an Applicant.

An Applicant for direct payment must prepare and submit the reimbursement request for their services, and cannot bill their client for the request preparation costs.

For all other work, DES recommends that the corrective action service provider prepare and submit reimbursement reguests on behalf of their client. Service providers with fund program experience are already familiar with reimbursement request submittal criteria and approval procedures. It may be difficult for the client to assemble the information necessary in support of a reimbursement request, for unusual project circumstances or when the service provider exceeds an budget. Although approved reimbursable, the fee charged for reimbursement request preparation is typically small. (Owners of multiple locations often employ the services of firms that specialize in preparing state fund reimbursement requests.)

However, for those facility owners, landowners, and Property Transferees who prefer to prepare their own requests, DES personnel recommend the following steps:

1. Use the Reimbursement Request Checklist/Ten Common Reasons card (found in the binder jacket) as a guide, and assemble relevant documents needed to prepare the request. It is particularly important to ensure that

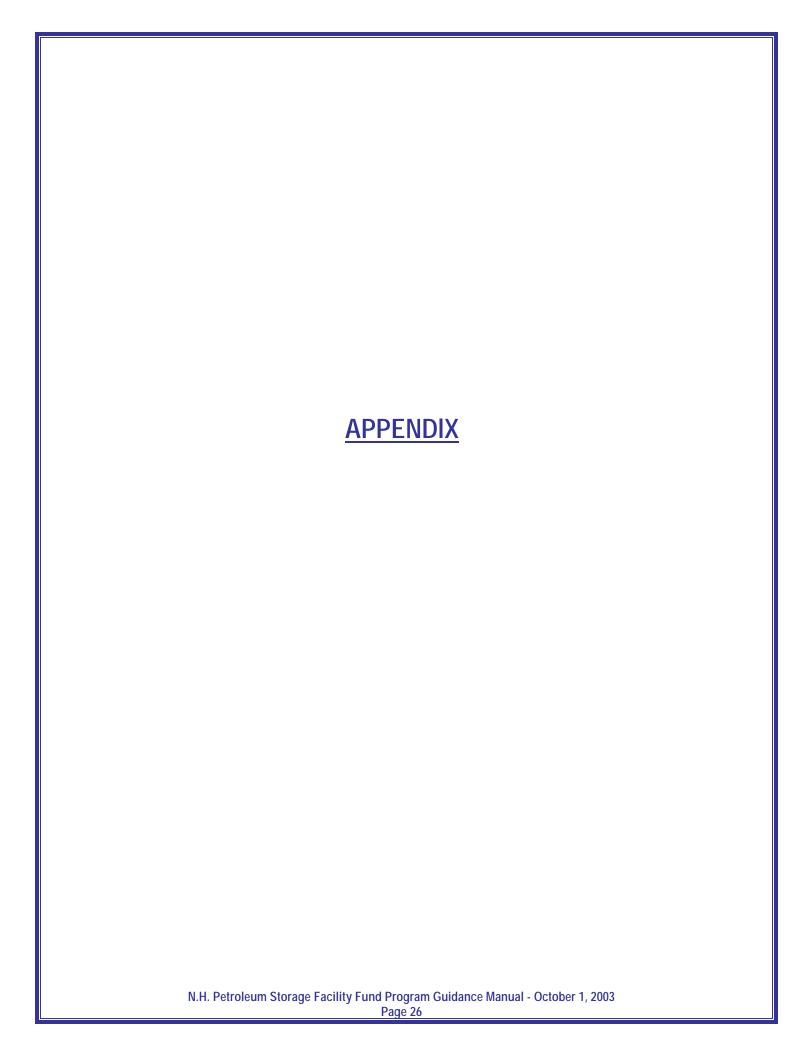
- the facility is in compliance, have all insurance documentation, contractor and subcontractor invoices for the work performed, and include all reports related to the corrective action, unless the reports were submitted to DES previously.
- 2. Complete the Request for Reimbursement Authorization form found in the Appendix, if submitting a first request, and sign the *Owner's Liability Statement & Affirmation*. The form is not needed for subsequent requests unless facility ownership is transferred. If so, the new owner must complete and submit a form with their first request.
- 3. Complete the (example) Invoice Summary found in the Appendix, or a facsimile of your own design, that includes all column headings as shown on the example. An invoice summary is a tool to list and organize invoiced expenses, to reconcile those expenses against approved budgets, and to determine if approved budgets were exceeded.
- 4. If approved budgets were exceeded prepare a written explanation that details (1) why the overage occurred and (2) the incremental costs in excess of the approved budget. (This will likely require consultation with the service provider or their direct assistance.)
- **5.** Prepare a cover letter following the example format found in the Appendix.

6. Photocopy the reimbursement request for your records then submit the request to the DES. (NOTE: Submit an authorization form with an original signature.)

You may call DES at any time to request guidance in preparing a reimbursement request.

Do I Have Rights Of Appeal?

Yes. Any person aggrieved by a decision concerning fund program eligibility or reimbursement may request an appearance or a formal hearing before the Board.



WORKSCOPE AUTHORIZATION - Odb 401.27



Use this form (s) to obtain pre-approval from NHDES for performing corrective action at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E or F. Contact NHDES for guidance on use of this form and the need for additional documentation to describe the proposed work. NOTE: You must receive NHDES approval even if private insurance is initially funding the work.

REIMBURSEMENT CANNOT BE AUTHORIZED		TE ESTIMA	ATE IS NOT		OVED BY DES	
Facility Name:			_	NHDES No.:		
Location Address:			UST	/AST Fac. ID#:		
Location Town:			_	Project Type:		
Facility Owner: Dates of Work:			P	hase Code (1):		
Dates of Work:			•	Consultant:		
Took Cummonu				Contractor:		
Task Summary:						
	I					
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost	
				Task total:		
Task Summary:				•		
, ,						
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost	_
Description	Utili Dasis (2)	Nate (2)	# UTIKS		Estilliated Cost	
T 10				Task total:		
Task Summary:						
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost	
			1			
			1			
						_

page 1 of 2 Task total:

Task Summary:					
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost
				Task total:	
Task Summary:					
•					
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost
				Task total:	
Task Summary:	Laboratory Analy	ysis			
			DES Ap	proved 24 HR Turi	naround?
Description	Unit Basis (2)	Rate (2)	# Units	Y/N	Estimated Cost
	Each				
				Task total:	
			Tota	I All Services:	
					(1) Phase Codes:
					IRA - Initial Response Action
					FPR - Free Product Removal
Owner's Representative:					ISC - Initial Site Characterization
	(signature/date))			SIR - Site Investigation
					RAP - Remedial Action Plan
NHDES Approval:					RPI - Remedial Plan Implementation
	(signature/date))			GMP - GW Monitoring/Permits
(2) Defends Cootion III of the Coldens Manual for 's family	an an an-libi-	unit bel			
(2) Refer to Section VI of the Guidance Manual for information	on applicable i	unit-dased co	osis and rates	S.	
A report documenting the approved work must be provided	to NHDES by:				
A report documenting the approved work must be provided	เบ เงเทบรอ มง:				

Please be advised that for homeowner requests for reimbursement of oil discharge cleanup costs submitted after April 4, 2001, a presumption will be applied that the costs for investigation and remediation of groundwater and surface water contamination are covered up to the limits of the homeowner's policy. To overcome this presumption, a written certification from the insurer that coverage does not extend to these costs under the terms of the policy and the reasons therefor must be submitted with the claim.

WORKSCOPE CHANGE ORDER AUTHORIZATION - Odb 401.27



Use this form(s) to obtain approval for a change order at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E or F. This form may be used for a Change Order to any approved work scope.

REIMBURSEMENT CA	annot be authorized if	A COMPLETE ESTIMATE	IS NOT PRE-APPROVED	BY DES

Facility Name:				NHDES No.:	
Location Address:			UST/A	AST Fac. ID#:	
Location Town:					
				ase Code (1):	
Dates of Work:				Consultant:	
•				Contractor:	
		C	Original DES Ap	proval Date:	
			Task Numb	er/Summary:	
Change Order Summary:					
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost
			-	Order Total:	
			Original App	proved Total:	
				New Total:	
					(1) Phase Codes: IRA - Initial Response Action
Consultant/Contractor:					FPR - Free Product Removal
	(signature/dat	e)			ISC - Initial Site Characterization
					SIR - Site Investigation
NHDES Approval:		۵)			RAP - Remedial Action Plan
	(signature/dat	e)			RPI - Remedial Plan Implementation GMP - GW Monitoring/Permits
					Civil CVV Mornitoring/1 Citifles

(2) Refer to Section VI of the Guidance Manual for information on applicable unit-based costs and rates.

OPUF WORKSCOPE AUTHORIZATION - Odb 401.27



Soil Excavation, Disposal & Restoration - 5 Days or Less

Facility Name: Location Address: Location Town: Facility Owner: Dates of Work:				NHDES No.: AST Fac. ID#: Project Type: Phase Code: Consultant: Contractor:	IRA
Work Summary:				•	
Category	Unit Basis (1)	Rate (1)	# Units		NTE Cost
Mobilization/Demobilization - incl.Site Visit + Dig Safe	LS	\$1,500	π UIIII3		IVIL COSt
Exterior Soil Excavation	Day	\$1,300			
Exterior Backfill and Site Restoration	Day	\$1,900			
Interior Soil Excavation (under floor or mobile home)	Day	\$2,400			
Interior Backfill and Site Restoration	Day	\$2,335			
Contaminated Soil Load/Transport/Disposal - Live Load	Day	\$1,900			
Contaminated Soil Load/Transport/Disposal - Roll-Off Cans	Day	\$1,065			
Contaminated Soil Load/Transport/Disposal - Vactor Truck	Day	\$1,725			
Structural Engineering Assessment	Job	\$1,200			
IRA Report	NTE	\$500			
Environmental Monitoring	Day	850			
Site Specfic Services (2)			Ca	ategory Total:	
Description	Unit Basis (1)	Rate (1)	# Units		Estimated Cost
•		, ,			
			Site S	specific Total:	
CONTAMINATED SOILS DISPOSAL & FILL MATE	RIALS - Subje	ct to Unit-	Based C	osts For Act	ual Quantities
Laboratory Analysis			DES Ap	proved 24 HR Turna	around?
Description	Unit Basis (1)	Rate (1)	# Units	Y/N	Estimated Cost
VOC Full List (w/trip blank)	Each	\$160			
VOC Short List (w/trip blank)	Each	\$140			
8270B or 8310 (PAH)	<u> </u>	\$150			
8015 DRO or GRO (TPH)	Each	\$90 \$35			
Ignitability (1010) VOC/TPH/Ignitability (for VPC soil disposal characterization)	Each Each	\$250			
VOC/TPH/PAH	Each	\$350			
VOC/TPH	Each	\$225			
TCLP Metals (8 RCRA) and prep time	Each	\$200			
			Lab	oratory Total:	
			Tota	I All Services:	
NUDES Approval				_	
NHDES Approval:	(signature/d	-1-1		•	
	(Signature/d	ate)			
(1) Rates indicated are as reported in Section VI of the Guidance Ma	anual. This is a Not	t-to-Exceed a	uthorization	1	
only. Reimbursement is limited to actual costs charged to complet	te the work, plus all	owable subc	ontractor ma	arkup.	
(2) Site-specific services/materials are limited to those specified in	-			•	
A report documenting the approved work must be provided to NHD					
Please be advised that for homeowner requests for reimbursement	-	eanun costs	submitted at	ter April 4 2001	. a
presumption will be applied that the costs for investigation and ren	~	-			
covered up to the limits of the homeowner's policy. To overcome t	-				

coverage does not extend to these costs under the terms of the policy and the reasons therefor must be submitted with the claim.

ENGINEER CERTIFICATION OF CONTRACTOR QUANTITIES



The engineer shall use this form to certify contractor quantities at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E or F for remediation costs associated with the implementation an approved remedial action plan. This form is only for use to support a contractor claim(s), and does not serve as a remedial plan implementation report.

CONTRACTOR QUANTITIES MUST BE CERTIFIED BY THE OVERSEEING ENGINEER

Facility Name: Location Address: Location Town: Dates of Work:	NHDES No.: UST/AST Fac. ID#: Project Type:	
Description of Work:		
Engineer's Name: Company Name: Address: Town:		Zip:
I hereby certify that the contractor's quantities as presented a orders, are correct based on appropriate measurement data, a if applicable, is an accurate representation of the facts that res	are consistent with the approved work scope and change and the contractor's justification for quantity overages,	
Engineer:(signature/date)		

AFFIX NEW HAMPSHIRE PROFESSIONAL ENGINEERING LICENSE SEAL/STAMP BELOW:

SAMPLE COVER/TRANSMITTAL LETTER TO ACCOMPANY REIMBURSEMENT CLAIM

(DATE)

Joyce Bledsoe, P.G. Fund Management Section Oil Remediation & Compliance Bureau NHDES – WMD 6 Hazen Dr., P.O. Box 95 Concord, NH 03302-0095

Re: [TOWN], [ADDRESS], [SITE/PROJECT NAME] Request for Reimbursement No. [NUMBER], - [DOLLAR AMOUNT] NHDES No. [########]

Dear Ms. Bledsoe:

The [PHASE/CORRECTIVE ACTION DESCRIPTION] at the above referenced site is complete. Attached, please find the following documents in support of this reimbursement request:

- Request for Reimbursement Authorization [1ST REQUEST ONLY].
- Property Transfer Deed & Amended Facility Registration [1st "PROPERTY TRANSFEREE" REQUEST].
- Owner's Insurance Information [1ST REQUEST ONLY]
- Facility Compliance Information [MAY BE NEEDED ON 1ST CLAIM TO ESTABLISH ELIGIBILITY].
- Applicant Contract Including Waiver of Claims [NEEDED FOR PAYMENT TO AN "APPLICANT"].
- Listing of Invoices [NEEDED FOR ALL CLAIMS].
- NHDES Work Scope/Change Order Authorizations [NEEDED FOR ALL CLAIMS].
- Contractor and Subcontractor Invoices [NEEDED FOR ALL CLAIMS].
- Activity Reports Not Previously Submitted to NHDES [MAY BE NEEDED].
- Contaminated Materials weigh data, analytical data, and certificate of destruction [MAY BE NEEDED].
- Employee Payroll, Benefits, and Equipment Operating Cost Data for Work Performed by the Facility Owner [MAY BE NEEDED].
- Replacement Backfill Weigh Data Or Backfill Waiver Request [MAY BE NEEDED, SEE SAMPLE BACKFILL WAIVER REQUEST LETTER].
- Waiver Request for Out-Of-Scope Work [MAY BE NEEDED, SEE SAMPLE WAIVER REQUEST LETTER].

The payment should be directed to:

[OWNER/"APPLICANT"/CO-PAYMENT/PAYEE - AS APPLICABLE] [ADDRESS] [TOWN/CITY, STATE ZIP]

Please call [NAME/the undersigned] at [PHONE NUMBER] if you have questions.

Sincerely,

[NAME, TITLE] [COMPANY NAME]

REQUEST FOR REIMBURSEMENT AUTHORIZATION - RSA 146-D, RSA 146-E, RSA 146-F

A. AUTHORIZATION INFORMATION



	On Fund Disbursement Board
(1) Type of Facility (check one): Bulk Motor Fuel (L	AST) On-Premise-Use Fuel Oil (OPUF)
Motor Fuel UST facility (LUST) Motor Oil Storage (MO	OST) Bulk Fuel Oil (FUEL)
(2) Type of Authorization (check one): First-Party Costs (Site Costs)	Cleanup Third-Party Costs (Court Judgmen
B. FACILITY INFORMATION	
 (1) Facility Name (or residence name): (2) Facility Address: (3) Facility Town: (4) Is this Facility Active or Permanently Closed?: (5) NHDES Facility Registration/Permit No. (N.A. for residence): (6) NHDES Project/Site No.: (7) Date of Discharge Discovery: 	(Complete Here)
C. OWNER/INSURANCE INFORMATION (See Instruct	ions Notes 5&6)
 (1) Owner's Name: (2) Mailing Address: (3) Daytime Phone: (4) Are you a new owner since last authorization?: (5) No. of facilities owned in NH (of type checked above): (6) Is coverage available under other insurance?: 	Complete Here) Yes Date of Purchase: No (Not Applicable for OPUF) Yes No Previously Determined
D. OWNER'S LIABILITY STATEMENT AND AFFIRM	IATION
I hear certify that the facility referenced above is currently in full com I understand that I shall no longer be eligible for reimbursement if fu I agree that I am responsible for a "deductible" to be applied agains satisfied. If initial reimbursement is made to an "Applicant", I under shall pay said amount within 30 days of the billing date, or shall arrefunds only provide excess insurance coverage. I declare under penalty of perjury that the representations made in the knowledge true and correct. I agree to reimburse the fund for any payments made to me based up information. NOTE: ONLY ORIGINAL SIGNATURE ACCEPTE	Il compliance is not maintained. It any amounts reimbursed to me from the fund, if not already It stand that I may be billed for the deductible amount and that I Inge for periodic payments. I understand the petroleum cleanup It is Request for Reimbursement Authorization are to the best of my Interpreted information on this form, or incorrect claim submittal
E. REIMBURSEMENT CLAIM SUBMITTAL INSTRUC	CTIONS
new authorization(s) is needed if facility/property ownership	osts, and for each facility type for third-party damage costs. A has changed. Include a copy of the property transfer deed and a Subsequent first-party cost claims only require the applicable a compliance with applicable requirements. covery, for costs associated with discharge discovery, for costs progress – unless authorized by NHDES.

E. REIMBURSEMENT CLAIM SUBMITTAL INSTRUCTIONS

(5)	Only the current facility/property owner is eligible for reimbursement. If you are the new owner of a facility for which the previous owner was reimbursed, you must check the box labeled "Yes" under Section C., Item (4) of this form, and indicate the date of purchase. You should as certain that NHDES records such as the facility registration and groundwater permit have been updated. Attach a copy of the property transfer deed and NHDES facility/permit records.						
(6)	By law, the petroleum cleanup funds only provide excess insurance to eligible facility owners. Therefore, you must exhaust any other insurance available to you for cleanup costs and/or third-party damages before you may be reimbursed from the funds. To demonstrate that you are eligible for reimbursement you must first submit a claim or request for coverage determination to your insurance carrier(s) before you submit an initial reimbursement request to the funds. Please attach the following documents to the initial authorization request for this facility, as applicable:						
	(Check)						
	a. A copy of the claim or request for coverage filed with all other insurance carriers for the facility/property.						
	b. Copies of all responses from other insurance carriers/agents regarding coverage determinations under other policies.						
	c. Copies of Declaration of Coverage sheets and other information regarding policy coverage, policy limits and payments received from other insurance.						
	If coverage under other insurance is available you must check the box labeled "Yes" under Section C., Item (6) of this form. If the information provided (see above C) indicates that the limits of coverage have been reached, your request will be processed.						
	If the information provided (see above A and B) indicates coverage has been denied, you may check the box labeled "No". Your reimbursement claims will be processed.						
	If the information provided indicates other insurance coverage issues are not resolved your request may be processed, however the fund will reserve the right to seek recovery of any payments made. Contact NHDES for further information regarding insurance coverage or discharge responsibility disputes.						
(7)	Requests for reimbursement authorization for third-party damage awards or settlements are subject to pre-notification procedures and submittal requirements specified in the rules of the Oil Fund Disbursement Board. (See N.H. Admin. Rules Odb 401)						
	Return completed form(s) and claims to:						
	Joyce P. Bledsoe, P.G. NHDES – WMD 29 Hazen Drive, PO Box 95						
	Concord, NH 03302-0095						
	If you have questions, call (603) 271-8740.						

NOTE: INCOMPLETE REQUESTS WILL BE RETURNED

NHDES#:	
Site/Project Name:	

REQUEST FOR REIMBURSEMENT - SUMMARY OF INVOICED COSTS (1)



INV. (2) DATE	INVOICE (2) NO.	WSA#/ DATE	PHASE CODE	REQ. NO.	CONTRACTOR (AS APPLICABLE)	SUB-CONTRACTOR (AS APPLICABLE)	TASK NO.	DESCRIPTION OF WORK (3) (Justify all cost overages)	TASK % COMP.	TASK BUDGET (If Applicable)	AMOUNT REQUESTED	BUDGET BALANCE (If Applicable)
								(====, ================================		, ,,,		()
			1							I		
								Totals:				

⁽¹⁾ Use this form or a facsimile to tabulate invoices and requested costs, and to indicate budget status, if applicable.

⁽²⁾ Only list invoice dates and invoice numbers for prime contractors. List subcontractor invoices and services under the applicable prime contractor invoice.

⁽³⁾ Use footnotes or an attachment to detail cost overages and provide justification.

OIL FUND DISBURSEMENT BOARD

Rep. Robert G. Holbrook, Chairman

SAMPLE WAIVER REQUEST LETTERS

Kevin A. Sheppard, P.E., Vice Chairman Sen. John Barnes Sen. Frank V. Sapareto Rep. D.L. Chris Christensen Thomas J. Frawley James E. Robertson John B. Howe James E. Connolly Jr. Ronald Poirier Scott R. Bryer, CPA Russell A. Nylander, P.E.

1.) OUT-OF-SCOPE WORK TO ACCOMPANY REIMBURSEMENT REQUEST

(DATE)

Rep. Robert G. Holbrook, Chairman Oil Fund Disbursement Board c/o NHDES Waste Management Division 6 Hazen Dr. P.O. Box 95 Concord, NH 03302-0095 Attn: Timothy R. Denison

Re: (TOWN), (SITE NAME), Request for Waiver of Odb 401.28(b) - Work Scope Approval (DES NO. #########)

Dear Rep. Holbrook,

On behalf of (SITE OWNER), (APPLICANT/CONTRACTOR) hereby requests a waiver of Odb 401.28(b), which requires that all corrective action work be pre-approved by DES for scope and cost, in accordance with Odb 401.27. Pursuant to Odb 401.40, this waiver is sought under the following circumstances:

- 1.) A waiver of Odb 401.28(b) is necessary because corrective action work was performed at the site, without preapproval by DES. Pre-approval could not be obtained because (DESCRIBE THE CIRCUMSTANCES). Specifically (GENERALLY DESCRIBE THE WORK) was performed at a (TOTAL COST) of (DOLLARS). A breakdown of the incremental (time, materials, personnel and equipment) costs for the work is attached to this letter. Although DES did not pre-approve the work, the DES project manager has retroactively agreed that the work was a necessary and reasonable course of action given the site conditions.
- 2.) In lieu of pre-approval, the owner requests that the Board accept (APPLICANT/CONTRACTOR'S) certification that the work was performed at a reasonable cost commensurate with similar work, performed under similar circumstances, at other fund-eligible sites. This assertion is supported by the detailed breakdown of the costs for the work attached to this letter.
- 3.) Granting this waiver request would be consistent with the intent of the statute and rules, as the owner is entitled to reimbursement for corrective action costs for work recognized as necessary and reasonable by DES. Further, the incremental costs did not exceed the prevailing market rate for goods and services provided to complete the work and the owner has not benefited from the work other than for the cleanup of (HIS/HER) property to its pre-release condition. Costs for corrective action work performed in accordance with NHDES rules are reimbursable under the provisions of the fund rules.

Oil Fund Disbursement Board Sample Waiver Request Letters Page 2

Attached to this letter, please find a detailed description and a breakdown of the costs for the corrective action work performed without benefit of DES pre-approval, but was otherwise necessary for remedying contamination at the site. We hope that the Board will act favorably on this waiver request. If you have any questions, please call the undersigned at (AREA CODE) (PHONE NUMBER).

Sincerely,

(NAME) (APPLICANT/CONTRACTOR)

Attachments: Description of Work Cost Detail cc: (OWNER)

2.) FORMER OWNER OF AN ACTIVE FACILITY

[DATE]

Rep. Robert G. Holbrook, Chairman Oil Fund Disbursement Board c/o NHDES Waste Management Division 6 Hazen Drive, P.O. Box 95 Concord, NH 03302-0095 Attn: Timothy R. Denison

Re: [TOWN], [SITE NAME], Request for Waiver of Odb 401.04(h)(1)

DES Site#[#######]

Dear Chairman Holbrook:

[FORMER OWNER(S)] hereby requests a waiver of Odb 401.04(h)(1), which limits reimbursement eligibility for an "active facility" to the current legal owner. In requesting this waiver, [I or we] certify that [I or we] [am or are], or will be, the former fund-eligible owner[s] of the active petroleum storage facility located at the above-referenced site. Pursuant to Odb 401.40, this waiver is sought due to the following circumstances:

- 1.) A waiver of Odb 401.04(h)(1) is necessary for [FORMER OWNER(S)] to be continuously eligible for reimbursement for corrective action costs incurred after legal transfer of the facility in question. Specifically, [FORMER OWNER(S)] [has or have] an obligation to continue corrective action after the date of legal ownership transfer to [NEW OWNER(S)], pursuant to the provisions of a [TYPE OF LEGAL DOCUMENT]. Under the legal agreement, [FORMER OWNER(S)] [is or are] liable for performing corrective action for releases of petroleum that occurred prior to the date of ownership transfer.
- 2.) In lieu of transferring eligibility to [NEW OWNER(S)], as required under Odb 401.04(h)(1), [FORMER OWNER(S)] requests that the Board accept the attached applicable section(s) of the [TYPE OF LEGAL DOCUMENT]. Said document demonstrates that [FORMER OWNER(S)] [has or have] an obligation to continue corrective action after transfer of facility ownership. Given the legal responsibilities associated with the ownership transfer, there are no other reasonable alternatives available to the parties other than a waiver of Odb 401.04(h)(1).

3.) Granting a waiver of Odb 401.04(h)(1) would be consistent with the intent of the statute, as [FORMER OWNER(S)] [is a or are] qualified fund-eligible facility owner[s] who [has or have], or will, incur costs for corrective action recognized as reasonable and necessary by NHDES. Granting a waiver would be consistent with the rules, which specify criteria for reimbursable costs incurred by a current or former facility owner.

Attached to this letter, please find a copy of the provisions of the [TYPE OF LEGAL DOCUMENT] referenced above. [I or we] hope that the Board will act favorably on this request. If you have any questions, please call the undersigned at (AREA CODE (PHONE NUMBER).

Sincerely,

[NAME] [REPRESENTING]

Attachment: [TYPE OF LEGAL DOCUMENT]

3.) BACKFILL MATERIAL WEIGH DATA

(DATE)

Rep. Robert G. Holbrook, Chairman Oil Fund Disbursement Board c/o NHDES Waste Management Division 6 Hazen Dr. P.O. Box 95 Concord, NH 03302-0095 Attn: Timothy R. Denison

Re: (TOWN), (SITE NAME), Request for Waiver of Odb 401.36(a)(7) - Backfill Weigh Data (DES NO. ########)

Dear Rep. Holbrook,

On behalf of (SITE OWNER), (APPLICANT/CONTRACTOR) hereby requests a waiver of Odb 401.36(a)(7), which requires that the site owner provide certified weigh data for backfill material brought on site to replace contaminated material disposed off-site. Pursuant to Odb 401.40, this waiver is sought under the following circumstances:

- 1.) A waiver of Odb 401.36(a)(7) is necessary because scales are not maintained by the operator of the borrow area where the backfill material was obtained, and a source of suitable borrow material where scales are maintained, was not located within reasonable distance of the project (site) location. If backfill material was obtained from a location with scales the cost to the site owner for that material would have been greater.
- 2.) In lieu of certified backfill weigh data, the owner requests that the Board accept (APPLICANT/CONTRACTOR'S) certification that (1) the material was not obtained from a borrow location owned by the site owner, and (2) the quantity of backfill material did not exceed the quantity of contaminated soil removed from the site. The quantity may be certified because (APPLICANT/CONTRACTOR) either oversaw the work of others who transported the material, or we provided the transportation with our own equipment. The total number of truckloads was (NUMBER) at (NUMBER) cubic yards per load, for a total of (NUMBER) cubic yards. At (TONS) per cubic yard

Oil Fund Disbursement Board Sample Waiver Request Letters Page 4

- conversion factor, the total calculated tonnage brought to the site was (TONS). The total tonnage transported off site and disposed was (TONS).
- 3.) Granting this waiver request would be consistent with the intent of the statute and rules, because the owner is entitled to reimbursement for corrective action costs for work requested and approved by NHDES. Further, the backfill material costs do not exceed the prevailing market rate for such material and the owner has not benefited from the work other than for the restoration of (HIS/HER) property to its pre-release condition. In-kind property restoration costs are reimbursable under the provisions of the fund rules.

Attached to this letter, please find load slips and other pertinent data related to the waiver request. If you have any questions, please call the undersigned at (AREA CODE) (PHONE NUMBER).

Sincerely, (NAME) (APPLICANT/CONTRACTOR)

Attachments: Load Slips (OTHER) cc: (OWNER)

OIL FUND DISBURSEMENT BOARD

Rep. Robert G. Holbrook, Chairman

Kevin A. Sheppard, P.E., Vice Chairman
Sen. John Barnes
Sen. Frank V. Sapareto
Rep. D.L. Chris Christensen
Thomas J. Frawley
James E. Robertson
John B. Howe
James E. Connolly Jr.
Ronald Poirier
Scott R. Bryer, CPA
Russell A. Nylander, P.E.

POLICY STATEMENTS

1.) PETROLEUM FUND REIMBURSEMENTS TO TRANSFEREE OWNERS – Revised January 22, 2001 (original March 29, 1999)

The Oil Fund Disbursement Board (Board) will apply the following policy in reviewing requests for reimbursement for corrective action costs under the transferee owner provisions of RSA 146-D, E, and F:

If the owner of a petroleum storage facility initiates corrective action or otherwise incurs cleanup costs pursuant to an agreement with a prospective transferee owner, but does not file reimbursement requests with the Board, the Board will deem petroleum fund coverage to have been triggered for purposes of the transferee owner provisions at RSA 146-D:6, I and I-a., RSA 146-E:6, VII and RSA 146-F:5, VIII. Persons who subsequently take title to the contaminated property or facility, and continue corrective action, will qualify as an owner for purposes of reimbursement for corrective action costs and third-party damage costs. If the owner of a permanently closed facility did not initiate corrective action or otherwise incur cleanup costs pursuant to an agreement with a prospective transferee owner, then the transferee owner cannot independently qualify for reimbursement.

The transferee owner shall file written notice with the Board including the name of the transferee, mailing address, telephone number, the effective date of the transfer of title, and a copy of the property deed. Where facility registration and corrective action permits recorded with the Department of Environmental Services (DES) are applicable, the transferee owner shall also file an amended facility registration form and request for permit modification with DES, with a copy to the Board.

The Board will determine the fund deductible to be applied based on the number of facilities owned by the transferee owner when an initial reimbursement request is submitted. The transferee owner shall comply with co-insurance requirements and all other provisions of the applicable statute and Board rules - reference N.H. Administrative Rule Odb 401.

2.) DELEGATION OF CERTAIN AUTHORITY TO NHDES – Revised May 20, 2002 (original November 29, 1999)

Item 1.

The Oil Fund Disbursement Board (Board) hereby authorizes the Department of Environmental Services (DES) to pay uncontested Odb 401, and uncontested Odb 601 first-party reimbursement claims, that meet all of the Board regulatory criteria under the following circumstances:

- (a) The total amount of the claim does not exceed \$50,000;
- (b) DES approved a work scope and associated budget prior to the start of work;

- (c) If an approved budget was exceeded, the applicant has provided a written justification that explains the need for the additional work, details the incremental costs of the additional work and provides an explanation of how the additional work was consistent with the scope of the original approved budget;
- (d) The claim does not involve a waiver of Odb 100-600 except as authorized by the Board; and
- (e)An appeal of previous Board or DES decisions associated with the claim is not being sought.

The Board or the Board Reimbursement Subcommittee (Subcommittee) must approve all other claims. DES shall determine the amount of reimbursement based on the first-party eligible cost criteria of Odb 401, or the criteria of Odb 601, as applicable. DES shall submit a monthly report to the Board and the Subcommittee listing all claims approved by DES during the previous month. DES shall consult with the Subcommittee on any sites involving multiple projects/releases, where there are significant facility compliance issues, or where the corrective action circumstances are unusual. At its discretion, the Subcommittee shall review the tenth claim submitted for each corrective action project.

Item 2.

The Oil Fund Disbursement Board hereby authorizes the Department of Environmental Services to pay first-party reimbursement claims under Odb 401 and Odb 601, for the following classes of costs incurred based upon the total pre-approved budget for each class where the facility owner or applicant otherwise meets all applicable regulatory criteria:

- (a) Engineering and hydrogeologic services;
- (b) Laboratory services;
- (c) Drilling, well installation or subsurface exploration services;
- (d) Contaminated soil treatment, disposal, and restoration services;
- (e) Groundwater treatment and product recovery equipment, operation and maintenance services; and
- (f) Other services.

Item 3

The Oil Fund Disbursement Board hereby deems all requests for waiver of Odb 401.04(h)(1) relative to limits of fund availability to be granted, where:

- (a) The person or entity seeking fund eligibility is a qualified former owner of an active facility as provided by statute; and
- (b) The person or entity seeking fund eligibility demonstrates that it has a legal obligation under a property transfer agreement to continue corrective action after the facility is/was conveyed.

DES shall submit monthly reports to the Board listing all entities and payments that have been subject to a waiver of Odb 401.04(h)(1), approved by DES during the previous month.

Item 4.

The Oil Fund Disbursement Board hereby deems all requests for waiver of Odb 401.36(a)(7) relative to requirements for certified replacement fill weigh data to be granted, where:

- (a) The backfill material was obtained from a source other than the facility owner; and
- (b) The total cubic yardage and tons per cubic yard conversion factor data, or other equivalent measurement method data, are provided.

DES shall submit monthly reports to the Board listing all entities and payments that have been subject to a waiver of Odb 401.36(a)(7), approved by DES during the previous month.

3.) REQUIREMENTS FOR ON-PREMISE-USE FACILITY RELEASE PREVENTION AND ELIGIBILITY FOR REIMBURSEMENT UNDER RSA 146-E - Effective January 10, 2000

The Oil Fund Disbursement Board (Board) will apply the following policy to implement an on-premise-use facility (OPUF) release prevention program, and to determine whether OPUF owners qualify for reimbursement under RSA 146-E for costs incurred in performing release prevention work:

All owners of on-premise-use facilities shall take measures to bring their facility into compliance with the requirements of RSA 146-E:4 and Department of Environmental Services (DES) "Best Management Practices" for such facilities.

Certain owners of on-premise-use facilities with demonstrated financial need, shall be eligible for reimbursement of costs to comply with the requirements of RSA 146-E:4 and DES "Best Management Practices" for such facilities, to a maximum of \$1,000.00, subject to the following:

- (1) The on-premise-use facility must be substandard as set forth in the DES "Best Management Practices" guidance document, such that the present condition of the facility represents a risk for a release to occur;
- (2) The on-premise-use facility must be located at a property that is the primary residence of the facility owner. Such property may include a single-family home, a duplex, a manufactured home, a farm, or a property where the owner also operates a small business;
- (3) The owner must not hold title to, or have an interest in, any income producing property other than that specified in paragraph (2) above, including but not limited to, stocks or real property held either individually, or through a business, trust, or other related entity; and
- (4) The owners total household annual income must not exceed the current U.S. Department of Housing and Urban Development low-income guidelines that apply to the county or "metropolitan statistical area" where the property is located.

The Board shall prioritize the allocation of on-premise-use facility release prevention reimbursement funds based on the applicability of DES facility and environmental risk factors to each specific circumstance.

OPUF owners seeking qualification for reimbursement for release prevention work shall complete an application form and provide associated information and records. Upon successful completion and inspection of release prevention work, qualified owners shall submit copies of all contractor and subcontractor invoices when requesting payment.

<u>NOTE:</u> This policy is effective during the interim period until amendments to the Board administrative rules (i.e., N.H. Admin. Rules Chapters Odb 100-400) are adopted. It is anticipated that such rule amendments will require that compliance with DES "Best Management Practices" be achieved within 5 years of the effective date of the rule amendments, or within 6 months of notification that a substandard condition exists, whichever is earlier.

4.) DELEGATION OF OPUF REIMBURSEMENT AUTHORITY TO NHDES – Effective March 24, 2000

The Oil Fund Disbursement Board (Board) hereby authorizes the Department of Environmental Services (DES) to pay uncontested on-premise-use facility (OPUF) release prevention reimbursement claims under the following circumstances:

- (1) The facility owner and the OPUF meet the eligibility criteria specified in the Board's January 10, 2000, Policy Statement On Requirements For On-Premise-Use Facility Release Prevention and Eligibility For Reimbursement Under RSA 146-E;
- (2) The owner completed an application form and provided associated facility information, financial records and copies of all contractor and subcontractor invoices; and
- (3) DES performed an inspection of the release prevention work and certifies that the work conforms to OPUF Best Management Practices.

5.) PRIORITIZATION OF REIMBURSEMENT CLAIMS APPROVAL – Effective June 26, 2000

The Oil Fund Disbursement Board hereby authorizes the Department of Environmental Services to assign the following priority for review and approval of uncontested reimbursement claims, provided there are sufficient funds available in the applicable account to pay all pending claims. If sufficient funds are not available, then all claims shall be reviewed in the order received.

High Priority – Pay-for-Performance projects, and all corrective action projects where there is a significant risk to human health and the environment:

Medium Priority – Residential, and all other corrective action projects where there is a moderate risk to human health and the environment; or

Low Priority – Corrective action projects where the submitted costs are more than one year older than the date of the claim.

<u>6.) SUBSTANTIAL COMPLIANCE WITH PETROLEUM STORAGE FACILITY RULES – Effective</u> November 25, 2002

The Oil Fund Disbursement Board shall apply the following policy in determining facility compliance and owner eligibility under RSA 146-D, RSA 146-E and RSA 146-F, pursuant to N.H. Administrative Rule Odb 401:

Owners of underground storage or bulk storage facilities seeking eligibility for reimbursement shall allow inspection, provide documentation, provide compliance work schedules, or provide other information as determined by the Department of Environmental Services (DES) to demonstrate substantial compliance with the provisions of Env-Wm 1401 or Env-Wm 1402, as applicable. For purposes of petroleum fund eligibility, "substantial compliance" pursuant to Odb 401.05, shall mean achieving and maintaining compliance with the following provisions of DES storage facility rules:

Eny-Wm 1401	<u>Env-Wm 1402</u>
Section .07 – Permit to Operate Section .11 - Inventory Monitoring	Section .09 - Inventory Monitoring
Section .12 – Regulated Substance Transfer	Section .10 - Oil Transfers
Section .17 – Temporary Closure	Section .24 - Overfill Protection
Section .18 - Permanent Closure	Section .25 - Interstitial Leak Monitoring for New ASTs
Section .25 – Spill Containment & Overfill Protection	Section .28 - Release Detection for AST Systems
Section .26 – Leak Monitoring for New Tanks	Section. 29 - Inspection & Reporting Requirements for AST Systems
Section .27 – Leak Monitoring for New Underground Piping Systems	Section .30 - Spill Prevention Control & Countermeasure Planning
Section .29 - Release Detection for Tanks Without Secondary Containment & Leak Monitoring Section .30 - Release Detection for Piping Section .31 - Operation of Leak Monitoring Equipment Section .32 - Corrosion Protection for Steel Tanks	Section .35 - Upgrading of AST Systems
Section .33 - Corrosion Protection for Piping	

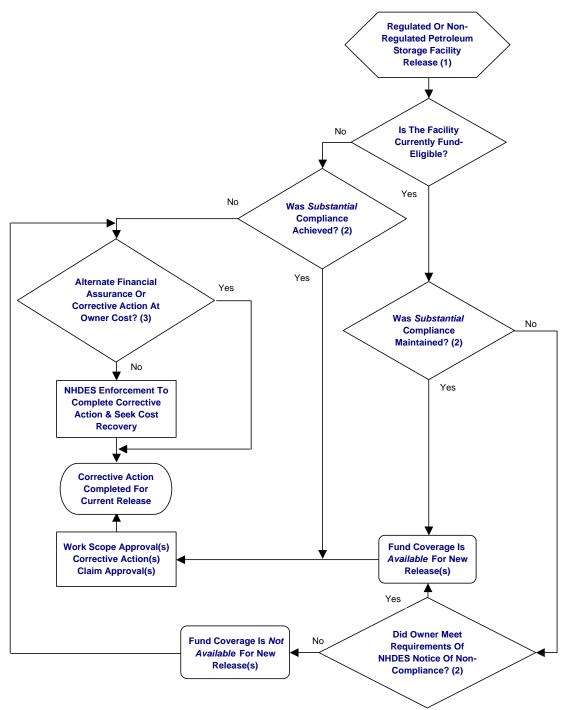
Any facility owner who achieves substantial compliance shall be eligible for reimbursement for an initial release at a facility, but shall not be eligible for reimbursement for a subsequent release if substantial compliance is not maintained, as set forth herein and on Exhibit A, titled "N.H. Petroleum Reimbursement Fund Program Facility Compliance (Eligibility) & Corrective Action Process."

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N.H. Petroleum Storage Facility Fund Program Facility Compliance (Eligibility) & Corrective Action Process



Oil Fund Disbursement Board



- (1) USTs regulated under Env-Wm 1401, ASTs regulated under Env-Wm 1402, or non-regulated on-premise-use heating oil & other small fuel tanks.
- (2) Fund coverage is not available for an initial release if substantial compliance is not achieved. Existing Fund coverage will not be available for a new release if compliance once-achieved, is not maintained, or if the owner did not comply with a NHDES Notice of Non-Compliance & Permit Revocation for a UST facility, Order to Cease AST Operation, or other regulatory or Best Management Practice notice of non-compliance.
- (3) Owners of USTs regulated under Env-Wm 1401, must maintain \$1M financial assurance if the Fund is not available.

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Department Of Environmental Services
Waste Management Division
Oil Fund Disbursement Board
6 Hazen Drive
Concord, NH 03302-0095

CHAPTER Odb 100 - REPEALED

Statutory Authority: RSA 146-D:5, I

REVISION NOTE:

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 100. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 100 include the following documents:

#4759, eff 2-13-90 #5115, eff 4-16-91

<u>Source.</u> (See Revision Note at chapter heading for Odb 100) #5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 200 OIL FUND DISBURSEMENT BOARD APPEAL PROCEDURES

REVISION NOTE

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 200. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 200 include the following documents:

#4760, eff 2-13-90 #5115, eff 4-16-91

Statutory Authority: RSA 146-D: I, RSA 146-E:6, I and RSA 146-F:5, I

PART Odb 201 APPEALS OF DECISIONS

Odb 201.01 Request for Hearing.

- (a) The procedures set forth in this part apply to all requests for adjudicatory hearings.
- (b) All requests for hearings shall be filed within 30 days of the date of notification of a board decision.
- (c) Upon request of an owner or applicant as applicable, the board shall convene a hearing to reconsider decisions regarding facility eligibility, reimbursement of eligible cleanup costs or third-party claims, confidentiality or waivers of rules.

- (d) Upon request of a distributor as defined in RSA 146-D:2, I, the board shall convene a hearing to reconsider decisions regarding waivers of penalties under RSA 146-D:3 III.
- (e) Any person aggrieved by a decision of the board may request a hearing, and such request shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.
- (f) The board shall establish a date and time for a hearing at its next regularly scheduled meeting following the receipt of a request, and shall provide notice in accordance with Odb 201.10.
- (g) Prior to commencement of hearing proceedings, any party may submit a written request to waive the application of any of the hearing rules of this part not required by statute. If no party objects to the request, and if the board determines that granting the request is necessary to conduct a more efficient hearing, then the rule or rules shall be waived and so noted in the hearing record.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.02 <u>Place of Hearings</u>. All hearings before the board shall be held at the Legislative Office Building, State Street, Concord, NH unless otherwise notified.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.03 <u>Computation of Time</u>. All time periods referenced in these rules shall be calendar days, commencing with the first day following the date of an action. If the last day of the time period falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.04 Extensions of Time.

- (a) Any party requesting a hearing pursuant to Odb 201.01 to an action before the board, may petition the board to extend any time limit prescribed by these rules. A request for an extension shall be submitted in writing to the board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties involved in the action.
- (b) Any other party to the action may object to the request by filing a written objection with the board within 5 days of receipt of the request, stating the reasons why the request should not be granted.
- (c) If there is no opposition to the request and if the delay would not prejudice the interests of any other party to the action, the board shall grant the request. If an objection to a request is filed, the board shall consider the reasons for and against the extension and shall rule on the request as on any other motion or appeal.

(d) The chairman of the board shall notify all parties of the board's actions.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.05 Office. The principal office of the board is located at the Waste Management Division, Health and Human Services Building at 6 Hazen Drive, Concord, NH.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.06 <u>Date of Filing</u>. All exhibits, findings of fact, correspondence, motions, petitions, applications and any other documents governed by these rules shall be deemed to have been filed with or received by the board on the actual date of receipt by the board.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.07 <u>Identification of Communications</u>. Communications shall contain the name and address of the communicator and the appropriate site identification number, where applicable, pertaining to the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.08 <u>Appearance Before the Board</u>. Any party or intervenors, or their designated representative, shall be entitled to enter an appearance and participate in the hearing. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter of the proceeding, may participate in the hearing to the extent that they are able to establish an interest, other than that of the public generally, in the subject matter of the proceeding.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.09 <u>Representatives</u>. Any party to a hearing before the board may be represented by an individual as that party may designate.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.10 <u>Notice of Hearings</u>. When a hearing is scheduled to consider issues raised by a request for hearing filed pursuant to Odb 201.01, notice shall be provided to all parties at least 15 days prior to the hearing date. The notice shall specify the date, time, place and subject matter of the hearing.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.11 <u>Hearing Record</u>. The record of the hearing shall consist of a verbatim recording of the hearing, documentary evidence introduced by the parties and documents of which official notice has been taken by the board.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.12 Hearing Procedures.

- (a) The presiding officer at a hearing shall be the chairman of the board if present and willing to preside. If the chairman is unavailable for whatever reason, the presiding officer shall be the vice-chairman, if available, or a member of the board selected by those members present at the hearing.
 - (b) The presiding officer may:
 - (1) Regulate the course of the hearing;
 - (2) Rule upon issues of procedure; and
 - (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.
 - (c) The hearing shall be conducted in accordance with the following provisions:
 - (1) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.
 - (2) Any person appearing before the board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.13 Documentary Evidence.

- (a) Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded. The experience, technical competence, and specialized knowledge of the board members shall be utilized in the evaluation of all evidence submitted to the board.
- (b) The board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.
- (c) All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide the board with 20 copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

- (d) All written statements and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the board's office in Concord during normal business hours.
- (e) In any proceeding involving an application, the application filed with the board, including exhibits and amendments thereto, shall become part of the record under Odb 201.11.
- (f) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed to permit interlocutory appeal of rulings of the presiding officer.
- (g) In any proceeding involving confidential information as defined under Odb 401.03(f), or an appeal of a determination of confidentiality made under Odb 401.13, public access to specific records or appearances shall be restricted as necessary to ensure confidentiality, or pending a final decision of the board.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.14 Exhibits.

- (a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.
- (b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.
- (c) The original exhibit and 20 copies thereof shall be provided to the board and at least 1 copy shall be provided to all other parties.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.15 Advance Filing of Exhibits. Any party intending to use exhibits shall file an original and 20 copies thereof with the board at least 15 days prior to the hearing at which such exhibits are to be introduced.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.16 <u>Signatures</u>. Every application, exhibit, notice, motion, petition, complaint, brief and memorandum shall be signed by the person filing the document, or by one or more attorneys in their individual names or by other duly designated representative on behalf of the person filing the document.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.17 Continuance.

- (a) Any party may request that a hearing conducted pursuant to this Part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party or a representative or critical documents.
- (b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason(s) for the request. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.
- (c) If the presiding officer determines that reasonable cause exists and that no other party will be prejudiced by the delay, the board shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.18 <u>Recess and Adjournment</u>. The presiding officer shall, from time to time, at the request of any party or members of the board, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.19 Conclusion of Hearing.

- (a) After the conclusion of the hearing, no other evidence shall be allowed into the record, except as provided in Odb 201.19(b).
- (b) Prior to the conclusion of the hearing a party may request that the record be left open for a specified period of time to accommodate the filing of documents not available at the hearing. If the board determines that such documents are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional documents shall be filed. The board shall allow 10 days from the date of filing for submittal of any party's response, prior to closing the record.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.20 <u>Reopening of the Record</u>. At any time prior to a final decision any party to a proceeding, including intervenors, may request the presiding officer to reopen the record to consider documents or arguments not previously considered. If the presiding officer determines that such documents or arguments are necessary to a full consideration of the subject matter of the proceeding the record shall be reopened, and written notice shall be given to all parties, including intervenors.

<u>Source.</u> (See Revision Note at chapter heading Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 201.21 <u>Decision of Board</u>. Following the conclusion of a hearing, or the closing of the record, the board shall issue a decision either granting or denying the relief requested by the aggrieved party.

<u>Source.</u> (See Revision Note at chapter heading Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97

PART Odb 202 WAIVERS

Odb 202.01 <u>Waiver of Penalties.</u> Upon request of a distributor as defined in RSA 146-D:2, I, the board shall consider waivers of penalties under RSA 146-D:3, III, and shall provide notice of its decision to the distributor within 60 days.

<u>Source.</u> (See Revision Note at chapter heading Odb 200) #5534, eff 12-21-92

CHAPTER Odb 300 - REPEALED

<u>Source.</u> #4761, eff 02-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 400 RULES FOR REIMBURSEMENT FROM THE OIL DISCHARGE CLEANUP FUNDS UNDER RSA 146-D, RSA 146-E AND RSA 146-F

PART Odb 401 REIMBURSEMENT PROCEDURES

Statutory Authority: RSA 146-D:5, I; RSA 146-E:6, I and RSA 146-F:5, I

Odb 401.01 <u>Purpose</u>. The purpose of these rules is to establish eligibility criteria and procedures for obtaining reimbursement of costs for corrective action and third-party damages which result from the discharge of oil, fuel oil or motor oil from a petroleum storage facility.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.02 <u>Applicability</u>. These rules shall apply to owners of facilities seeking eligibility for reimbursement on or after the effective date of these rules.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.03 Definitions.

- (a) "Active facility" means an oil, fuel oil or motor oil storage facility which has not been permanently closed in accordance with department rules.
- (b) "Applicant" means a person who performs corrective action under contract with a facility owner, or under contract with a transferee of property as specified in Odb 401.06.

- (c) "Board" means the oil fund disbursement board established by RSA 146-D:4.
- (d) "Bodily injury costs" means damages proven by expert medical testimony as to diagnosable personal injury, illness, or other bodily injury, including emotional distress accompanied by physical manifestations, suffered by a party other than an owner or its agents as a result of a discharge.
- (e) "Capital equipment" means electronic, chemical, mechanical or structural equipment installed to perform corrective action, which has a long-term life greater than 2 years and has an initial value or purchase cost, either individually or as an aggregate, of \$10,000.00 or more.
- (f) "Confidential business information" means information that was accumulated, compiled, discovered or purchased by the owner/applicant or employees of a business through their own efforts, which is not readily available through normal business channels and which confers a competitive benefit which would be lost by disclosure of the information, provided the owner/applicant has taken reasonable measures to protect the confidentiality of the information and will continue to take such measures.
- (g) "Contamination" or "contaminated" means the presence of oil, fuel oil or motor oil in the groundwater, surface water or soil as a result of a discharge from a facility.
- (h) "Corrective action" means investigation or cleanup activities performed in accordance with Env-Ws 410 or Env-Ws 412, and approved by the department, to remedy contamination or contain a discharge.
- (i) "Corrective action report" means a report on site conditions or cleanup submitted in accordance with Env-Ws 410 or Env-Ws 412.
- (j) "Deductible" means initial costs incurred for corrective action for which an owner is liable to the fund under RSA 146-D:6, II.
 - (k) "Department" means the New Hampshire department of environmental services.
 - (1) "Discharge" means a spill or release of oil, fuel oil or motor oil from a facility.
- (m) "Emergency services" means corrective action performed to mitigate an immediate threat to human health and the environment. Emergency services includes responding to one or more of the following conditions: explosive levels or concentrations of vapors in buildings or subsurface utilities; free product present in significant quantities at ground surface, on surface water bodies, in subsurface utilities or surface water runoff; contamination or immediate threat of contamination to active water supply wells, or public water supply surface water intake; and ambient vapor concentrations which exceed concentrations of concern from acute exposure or safety viewpoint.
 - (n) "Facility" means:
 - (1) A "bulk storage facility" as defined in RSA 146-D:2, V or RSA 146-E:2, I;
 - (2) An "on-premise-use facility" as defined in RSA 146-E:2, III;
 - (3) A "motor oil storage facility" as defined in RSA 146-F:2, II; or

- (4) An "underground storage facility" as defined in RSA 146-D:2,II, as applicable.
- (o) "Financial statement" means a complete accounting of a facility owner's business and personal financial condition which shall include a balance sheet of assets and liabilities and an income statement of annual revenues and expenses.
- (p) "First-party costs" means costs directly incurred by an owner or applicant, or which are a contractual obligation of an owner, for performing corrective action.
- (q) "Fuel oil" means "fuel oil" as defined in RSA 146-E:2, II, namely "fuel oil products stored for onpremise heating purposes, and not for purposes of propulsion of motor vehicles, operation of machinery, or primarily used for the generation of electric power".
- (r) "Fund" means the Oil Discharge and Disposal Cleanup Fund established by RSA 146-D, the Fuel Oil Discharge Cleanup Fund as established by RSA 146-E, or the Motor Oil Discharge Cleanup Fund established by RSA 146-F, as applicable.
- (s) "Fund account" means the underground storage facility or bulk storage facility reimbursement accounts established under RSA 146-D:3, VI, or reimbursement accounts established by the board under RSA 146-E or RSA 146-F, as applicable.
- (t) "Motor oil" means "motor oil" as defined under RSA 146-F:2, I, namely "any lubricating oil, which is reclaimable, classified for use in an internal combustion engine, transmission, gear box, or differential for a motor vehicle, boat, or off-highway recreational vehicle, or commercial or household power equipment".
- (u) "Oil" means "oil" as defined in RSA 146-D:2, III, namely "gasoline and diesel products for purposes of collection of fees under RSA 146-D:3, and shall mean 'oil' as defined under RSA 146-C:1,XII, for purposes of reimbursement of costs for cleanup and third-party damages resulting from a discharge. For purposes of collecting fees under RSA 146-D:3, the term 'oil' shall not include natural gas, liquefied petroleum gas, or synthetic natural gas, regardless of derivation or source, or any oil or diesel products used for heating, processing, or generating electricity".
- (v) "Other insurance" means private insurance coverage for corrective action and third-party damage costs that is valid and collectible by the owner, and includes private insurance held by the owner through either a wholly-owned or jointly-owned subsidiary in the business of providing insurance coverage to the owner or to the owner and others.
 - (w) "Owner" means the person in possession of or having legal ownership of a facility.
- (x) "Performance standard" means an expected level of completeness, quality and/or reduction in measurable contamination when performing corrective action in accordance with department of environmental services rules.
- (y) "Permanently closed facility" means an oil, fuel oil or motor oil storage facility which is no longer usable due to the physical removal of all tanks and appurtenances from the property, or due to closure in place on the property, and the removal or closure was performed in accordance with department rules.

- (z) "Person" means "person" as defined in RSA 146-C:1, XIV-a, namely "any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, limited liability company, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity".
- (aa) "Property damage" means physical damage to, or loss of use of, tangible property owned by a party other than the facility owner or his/her employees.
- (ab) "Property restoration" means in-kind repair or replacement of landscaping, roadways, structures or other property which is damaged as a result of performing corrective action within the limits of a site.
- (ac) "Property transferee" means a person who takes legal title to property from a fund eligible owner of a permanently closed facility and who may receive reimbursement for corrective action costs directly from the fund under certain conditions under these rules.
- (ad) "Reasonable cost" means the prevailing market rate for labor, materials, goods, services or task for performing corrective action.
- (ae) "Reimbursement" means an assignment of money made by the board from the fund in payment of reimbursable costs.
- (af) "Site" means the area contaminated by a discharge of fuel oil or oil from a facility without regard to property boundaries.
- (ag) "Third-party damage costs" means costs which are an obligation of an owner as a result of a court-approved settlement or judgment in a civil action against the owner by a party who has suffered bodily injury or property damage as defined in these rules.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.04 Limits of Fund Availability.

- (a) The fund shall be available for payment of reimbursable first-party costs and reimbursable third-party damage costs resulting from discharges of oil, fuel oil or motor oil from a facility.
- (b) Reimbursements under RSA 146-D shall be limited to costs incurred on or after the date of discovery of a discharge or July 1, 1988, whichever is later.
- (c) Reimbursements under RSA 146-E shall be limited to costs incurred on or after the date of discovery of a discharge or October 1, 1992, whichever is later.
- (d) Reimbursements under RSA 146-F shall be limited to costs incurred on or after the date of discovery of a discharge or July 1, 1995, whichever is later.

- (e) Reimbursements under RSA 146-D shall be limited to \$1,000,000 per discharge, and reimbursements under RSA 146-E and RSA 146-F shall be limited to \$500,000 per discharge. The per discharge limit shall be the sum of reimbursable first-party costs and reimbursable third-party damage costs.
- (f) The fund shall not be available for reimbursement of first-party costs and third-party damage costs covered under other valid and collectible policies of insurance.
- (g) The fund shall be available for facilities which are in compliance with all registration, permitting, permit fee and operating requirements applicable to each facility. Facility compliance and eligibility requirements shall be those specified under Odb 401.05.
 - (h) The following persons and entities shall be eligible for reimbursement under the fund:
 - (1) Current owners of active facilities;
 - (2) Owners of permanently closed facilities to the extent that a property transferee is not eligible for reimbursement under Odb 401.06; and
 - (3) Property transferees under Odb 401.06.
- (i) The former owner of an active facility shall be eligible for reimbursement for corrective action costs incurred prior to the effective date of ownership transfer and for reimbursement of third-party damage costs resulting from lawsuits filed prior to facility transfer, subject to the limitations of these rules.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.05 Facility Compliance And Fund Eligibility Requirements.

- (a) Underground storage facilities shall be in compliance with the registration requirements of RSA 146-C:3, Env-Wm 1401, and all required permit fees due under under RSA 146-C:4, III shall have been paid.
- (b) Bulk storage facilities shall be in compliance with the registration requirements of RSA 146-D:6, I-a. or RSA 146-E:5, I as applicable, and all applicable state and federal regulations.
 - (c) On-premise-use facilities shall be in compliance with the requirements of RSA 146-E:4.
 - (d) Motor oil storage facilities shall be in compliance with the requirements of RSA 146-F:4.
- (e) Eligibility for reimbursement from the fund shall be contingent upon demonstration that facility compliance has been achieved and maintained.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97

Odb 401.06 Reimbursement of Corrective Action Costs to Property Transferees.

- (a) Persons who are not owners of a permanently closed facility, and who take title to property from an eligible facility owner, may obtain reimbursement for corrective action costs if the following conditions are met:
 - (1) The facility owner is eligible for reimbursement of corrective action costs and signs a waiver of any rights for reimbursement of costs incurred for corrective action contracted after the effective date of the property transfer;
 - (2) The facility is in compliance as required under Odb 401.05;
 - (3) Legal title to the property upon which the facility was located has been transferred to the person seeking reimbursement, and the transferee has filed written notice with the board including the name of the transferee, mailing address, telephone number, the effective date of the transfer of title, and a copy of the property deed;
 - (4) The transferee has assumed responsibility for performance of corrective action, has transferred applicable corrective action permits to his or her name and otherwise qualifies for reimbursement under these rules; and
 - (5) The owner's deductible obligation under Odb 401.11 has been satisfied.
- (b) Transferees who obtain reimbursement for corrective action costs under this section shall not be eligible for reimbursement of third-party damage costs.
- (c) The facility owner shall continue to be eligible for reimbursement for corrective action costs incurred prior to the effective date of the property transfer and for reimbursement of third-party damage costs, subject to the limitations of these rules.

Source. #6543, eff 7-22-97

Odb 401.07 Coverage Under Other Insurance.

- (a) The fund shall provide excess insurance to reimburse first-party costs or third party damage costs not covered within the limits of other valid and collectible insurance. The fund shall provide coverage only after any primary, excess, and umbrella coverage has been exhausted. The fund shall only be liable for those costs incurred by the owner or property transferee that are in excess of the total amount of the limits of liability under all such other insurance held by the owner, and only up to the applicable limit of liability for the applicable fund.
- (b) An owner who holds a policy of insurance for a facility or property shall first submit claims to other insurance providers for purposes of a coverage determination before submitting any claims to the fund. The owner shall submit documentation regarding the findings of the coverage determination when submitting an initial reimbursement request to the fund. If coverage is denied or payment is otherwise refused, the insurance shall be deemed not collectible by the owner.
- (c) An owner who has received payment from an insurance provider shall provide a copy of the claim filed with its provider and a complete listing of invoices which have been paid by such insurance, when submitting an initial reimbursement request to the fund. Such listing shall be certified for accuracy by the insurance provider.

- (d) An owner may utilize other insurance to cover the cost of the fund deductible or for costs which are not eligible under the fund. Reimbursements from the fund shall be adjusted such that the total of payments received from the fund and other insurance does not exceed an owner's total incurred costs.
- (e) An owner shall not be required to submit a workscope and budget under the provisions of Odb 401.27, unless the limits of coverage under other insurance will be exceeded prior to the completion of a corrective action phase. In this event, the owner shall comply with the provisions of Odb 401.27 prior to initiating a corrective action phase and shall specify those tasks for which it will seek reimbursement from the fund.
- (f) The fund shall not provide reimbursement to an insurer that submits a claim under a subrogation agreement with the owner or through an owner's attempted assignment of interest.
- (g) The board shall be subrogated to any claims by an owner for coverage, payments, or reimbursements against any person to whom the owner has a claim.

Source. #6543, eff 7-22-97

Odb 401.08 Assignment and Subrogation.

- (a) An owner's assignment of interest in the fund or right of subrogation claims against the fund shall not be assignable or transferable to a third party. Any attempted assignment or transfer shall not be effective against the fund and shall be considered void.
- (b) If an owner's insurance coverage, or the responsibility for the discharge, is in dispute, and in the event of any payment from the fund, the board shall be subrogated to all the owner's rights of recovery therefor against any person or organization including other insurers. The owner shall execute and deliver instruments and do whatever else is necessary for the board to pursue such claims upon request by the board.
- (c) The board shall be subrogated to any claims by an owner against any third parties and the board shall be entitled to recover any payments made by a third party to an owner for expenses previously reimbursed by the fund.

Source. #6543, eff 7-22-97

Odb 401.09 Proof of Discharge

- (a) The owner of an active or permanently closed facility seeking eligibility for reimbursement from the fund, shall provide evidence of a discharge of oil, fuel oil or motor oil by one or more of the following means:
 - (1) Photographs, release detection records, or physical evidence of a structural failure of a facility storage or conveyence device, or other event, which results in a discharge; or

- (2) Site investigation data which indicates the presence of contamination in soil or groundwater at a site, which is consistent with the nature of the oil, fuel oil or motor oil product stored or formerly stored at a facility, and which is not associated with another facility located in the vicinity of the owner's facility.
- (b) Proof of discharge required under this section may be submitted to the department when notification is provided pursuant to Env-Ws 412.04, or when a facility closure report is submitted.
 - (c) Multiple discharges from a facility discovered at one time shall be considered a single discharge.

Source. #6543, eff 7-22-97

Odb 401.10 <u>Determination of Fund Account</u>. When contamination is discovered at a site or property which contains more than one facility type covered under these rules, the board shall request that the department determine the fund account(s) for reimbursement purposes based on a comparison of the contamination present in soil and/or groundwater, and the nature of the oil, fuel oil or motor oil product stored.

Source. #6543, eff 7-22-97

Odb 401.11 Liability for Deductible.

- (a) The owner of a facility seeking eligibility for reimbursement from the fund shall be liable for initial cleanup costs as described in RSA 146-D:6, II. The deductible amount shall be withheld when reimbursement is payable to an owner, but shall not be withheld when reimbursement is payable to an applicant.
- (b) If an initial reimbursement request is submitted by an applicant, the board shall bill the owner for the deductible amount and the owner shall pay the deductible amount to the fund within 30 days of the billing date.
- (c) If the owner is not able to pay the entire deductible amount within 30 days of the billing date, the owner shall submit a written request that the board approve periodic payments.
 - (d) The request for approval of periodic payments shall include the following information:
 - (1) The owner provides written confirmation that it has been denied credit or a loan from at least two lending institutions;
 - (2) The owner provides a complete financial statement as defined in these rules, which demonstrates that the entire deductible amount is not immediately available for payment and;
 - (3) The owner proposes an amount to be paid to the fund each month which is conmensurate with the owner's ability to pay, in consideration of other financial obligations.
- (e) The board shall approve a request for periodic payments upon determining that the submittal requirements of paragraph (d) above have been met, and shall issue a written notice of its decision.
- (f) The owner shall submit an annual financial statement update commencing 12 months after the date of the board's initial approval of a request for periodic payments. If the information provided by the owner indicates an adjustment in the amount of periodic payments is warranted due to a change in the owner's

financial condition, the board shall modify its approval for periodic payments accordingly, and shall issue written notice to the owner.

Source. #6543, eff 7-22-97

Odb 401.12 <u>Determination</u> of Deductible.

- (a) Upon receipt of an initial request for reimbursement, the board shall request that the department review its records to verify the number of facilities the owner has indicated it owned as of the date of discovery of a discharge.
- (b) The deductible assessed for each facility discharge shall be as required under the provisions of RSA 146-D:6, II, which were in effect at the time the discharge was discovered. Any permanently closed facility at which no contamination is present, no corrective action is required, or no access to the fund will be sought, shall not be included in the total ownership count for purposes of determining the deductible.
- (c) If separate discharges have occurred at a site, a separate deductible shall be applied for each facility fund account and for each discharge.

Source. #6543, eff 7-22-97

Odb 401.13 Confidentiality.

- (a) Except as specified in (c) below, and except for the name and address of any owner or applicant, the owner or applicant may claim as confidential any information believed to be confidential business information as defined in Odb 401.03(f). All claims of confidentiality shall be asserted at the time of submission by stamping or writing the words "Confidential Business Information" on each page containing such information and by specifying those portions of the information on the page to which the claim shall apply if the claim does not apply to all information on the page. If no such claim shall have been made at the time of submission, the board shall not restrict public access to the information.
- (b) Subject to (c) below, if the board receives a request for information that has been designated as "Confidential Business Information" as understood under RSA 91-A:5, the board shall review the information against the definition of Odb 401.03(f). If the board determines that the information fails to meet the definition of confidential business information, it shall notify the owner or applicant that the information shall be released on a specific date, which shall be no earlier than 30 days from the date of the board's notice. Based on the owner's or applicant's response, the board shall make specific findings as to whether the information is confidential business information. If the board finds that the information shall not constitute confidential business information, the board shall release the information to the person requesting the information and shall thereafter not restrict public access to the information. Requests for reconsideration of the board's decisions shall be made in accordance with Odb 401.39. The board shall not release the information until a final decision on the merits of a reconsideration request is reached.
- (c) The board shall release information for which a claim of confidentiality has been asserted to any agency of the state or federal government having an interest in or jurisdiction over the subject matter, provided

the agency guarantees the same degree of confidentiality afforded by the board under these rules. Notice to the owner or applicant shall not be required for a release of information pursuant to this paragraph.

Source. #6543, eff 7-22-97

Odb 401.14 Corrective Action Contracts.

- (a) Any facility owner or property transferee may enter into a contract with a person for performance of corrective action which includes provisions for direct reimbursement to the contractor as an applicant from the fund.
- (b) Corrective action contracts may provide for direct reimbursement to a person who manages and oversees the performance of one or more cleanup phases as defined in department rules, but shall not provide for separate reimbursement to individual subcontractors.
- (c) Any person who enters into a contract with a facility owner or property transferee which includes provisions for direct reimbursement from the fund, shall agree to waive all claims against the owner or property transferee for payment of services performed within the limits of the contract. The applicant shall obtain waivers of claims against the owner or property transferee, the applicant and the fund from all subcontractors.
- (d) For implementation of a department approved remedial action plan, an owner or property transferee may enter into separate contracts with the person who manages and oversees plan implementation and the person who performs construction or cleanup operation services.

Source. #6543, eff 7-22-97

Odb 401.15 <u>Reimbursement Not Contract</u>. Reimbursement by the board to an owner, property transferee or applicant under these provisions shall not be considered a contract.

Source. #6543, eff 7-22-97

Odb 401.16 <u>Permits Required.</u> Nothing contained in these rules shall relieve any owner, property transferee or applicant from obtaining the necessary appropriate federal, state, and local authorization, certification, or permits as required.

Source. #6543, eff 7-22-97

Odb 401.17 <u>Liability for Corrective Action</u>. Nothing contained in these rules shall relieve any owner or property transferee from liability for performing corrective action, in accordance with RSA 146-A, RSA 146-C, and Env-Ws 410 or Env-Ws 412, when a discharge of oil, fuel oil or motor oil occurs.

Source. #6543, eff 7-22-97

Odb 401.18 Right to Enter.

(a) An owner or property transferee shall allow the board or its designee to enter, during reasonable hours, any facility or site location and associated structures, including offices, to:

- (1) Inspect any corrective action activity;
- (2) Inspect facility records with regard to compliance with department or board rules, corrective action work and associated costs; and
- (3) Inspect contractor records with respect to corrective action work and associated costs.

Source. #6543, eff 7-22-97

Odb 401.19 <u>Financial Audit</u>. An owner, property transferee or applicant shall allow the board or its designee to conduct financial audits of all records pertinent to site corrective action to ensure compliance with Odb 401.28 and Odb 401.29.

Source. #6543, eff 7-22-97

Odb 401.20 <u>Technical Audit</u>. An owner, property transferee or applicant shall allow the board or its designee to conduct technical audits to determine if corrective action was performed in accordance with department of environmental services rules.

Source. #6543, eff 7-22-97

Odb 401.21 <u>Corrective Action Report Format.</u> All corrective action reports for which reimbursement of associated costs will be sought, shall conform to the requirements of Env-Ws 410 or Env-Ws 412 as applicable.

Source. #6543, eff 7-22-97

Odb 401.22 <u>Achievement of Performance Standard.</u> All corrective action work for which reimbursement is sought shall meet the applicable performance standard required under department of environmental services rules.

Source. #6543, eff 7-22-97

Odb 401.23 <u>Reimbursement for Work-In-Progress.</u> When the performance of a corrective action phase will extend beyond a period of 3 months, reimbursement requests may be submitted for completed work based on a schedule for completion of tasks approved by the department prior to commencement of the work under Odb 401.27.

Source. #6543, eff 7-22-97

Odb 401.24 Reimbursement for Capital Equipment Costs.

- (a) The costs for the installation or use of capital equipment shall be eligible for reimbursement at the lease rate, or if purchased, at the vendor cost as established by the firm invoiced cost to the owner or property transferee.
 - (b) If the equipment is purchased, the fund shall retain all rights for any salvage value of the equipment.

- (c) When the project is at or near completion the board, in consultation with the owner regarding its intentions for the disposition of the equipment, shall:
 - (1) Withhold from reimbursement an amount equal to the salvage value calculated by the owner, property transferee or applicant under Odb 401.27;
 - (2) Require that the actual salvage value be repaid to the fund if the equipment is repossessed or sold; or
 - (3) Permit the bid-based salvage value to be used to offset equipment decommissioning costs.
- (d) Reimbursement for purchased capital equipment shall not be approved until the capital equipment is installed and operating within the required equipment performance standard and in accordance with the equipment specifications approved by the department.

Source. #6543, eff 7-22-97

Odb 401.25 <u>Reimbursement Under Lump-Sum Contracts.</u> Reimbursement under lump-sum contracts for implementation of a department-approved remedial action plan, shall be based on the percent completion of approved tasks or the percent reduction in contaminant mass, as applicable.

Source. #6543, eff 7-22-97

Odb 401.26 <u>Corrective Action Performed by Owner or Property Transferee.</u> Any facility owner or property transferee may perform corrective action utilizing its own employees and equipment subject to other applicable requirements or limitations of these rules. Reimbursement shall be limited to the owner's actual costs based on employee pay rates, cost of benefits and equipment operating costs. An owner's costs associated with direct oversight of its employees shall not be reimbursable.

Source. #6543, eff 7-22-97

Odb 401.27 Corrective Action Approval Requirements.

- (a) The owner or applicant shall submit a separate workscope and budget for each investigative, remedial, monitoring or management permit phase of the corrective action as described under Env-Ws 410 or Env-Ws 412.
- (b) The owner or applicant shall submit a workscope and budget for performance of free product recovery or initial response action under Env-Ws 412 upon determination that one or more of the following circumstances exist:
 - (1) Multiple free product recovery wells will be required;
 - (2) Free product recovery based on groundwater depression and groundwater treatment will be required; or
 - (3) Temporary potable water supply treatment will be required.

- (c) Free product recovery or initial response action services not subject to paragraph (b) above, shall be approved by the department based on the contractor's estimate as provided on the department's "Authorization for Initial Response Action" form, or similar contractor provided form. Reimbursable first-party costs shall be subject to the limitations of Odb 401.28 and Odb 401.29.
- (d) Reimbursable first-party costs for the performance of an initial site characterization or a preliminary site investigation under Env-Ws 410 or Env-Ws 412 shall be subject to the limitations of Odb 401.28 and Odb 401.29.
- (e) With the exception of sole-source technologies, the owner or applicant shall solicit at least three competitive proposals for implementation of a department-approved remedial action plan, and shall include all responsive proposals with the workscope submitted for department review. For purposes of this paragraph, sole-source technology means a technology which is available through a single contractor or equipment vendor, and would otherwise not be available at a lower cost due to patents or other similar proprietary information.
- (f) Workscopes for implementation of approved remedial action plans shall include an estimated schedule for achievement of reduction of total contaminant mass in soil and groundwater at intervals of 25 percent, 50 percent, 75 percent and 100 percent of the approved performance standard.
 - (g) Proposed work scopes and budgets shall include the following information:
 - (1) Identification of the Env-Ws 410 or Env-Ws 412 corrective action phase, as applicable;
 - (2) Listing of tasks for each phase;
 - (3) Classification of work for each task by:
 - a. Engineering and hydrogeologic services;
 - b. Laboratory services;
 - c. Drilling, well installation or subsurface exploration services;
 - d. Contaminated soils treatment, disposal and restoration services;
 - e. Groundwater treatment and product recovery equipment, operations and maintenance services; and
 - f. Other services;
 - (4) Listing of contractors, subcontractors and equipment vendors for each class, if known;
 - (5) Description of work including, but not limited to:
 - a. Personnel description, hours, rate and cost;
 - b. Temporary equipment or services description, units, unit basis, rate and cost;

- c. Permanent equipment description, units, unit basis, rate and cost, and salvage value;
- d. Recoverable equipment description, units, unit basis, rate and cost, and salvage value;
- e. Expendable supplies description, units, unit basis, rate and cost;
- f. Miscellaneous expenses description, units, unit basis, rate and cost;
- g. Estimated operation and maintenance costs for installed equipment description, units, unit basis, rate and cost; and
- h. Fees and handling expense description, units, unit basis, rate and cost;
- (6) Total cost for each task:
- (7) Total cost for each phase; and
- (8) A schedule for completion of the work.
- (h) An evaluation of the cost-effectiveness of leasing versus purchasing capital equipment shall be submitted with the workscope. The evaluation shall consider equipment cost, reliability, efficiency and performance over the estimated duration of the project.
- (i) The department shall approve proposed work scopes and budgets based on a determination of the following:
 - (1) That the proposed workscope meets the submittal requirements of this section;
 - (2) That the proposed work described by the categories of Odb 401.27(g), meets department requirements for site corrective action; and
 - (3) That the proposed costs are reimbursable first-party costs as described under Odb 401.28 and Odb 401.29.

Source. #6543, eff 7-22-97

Odb 401.28 Reimbursable First-Party Costs.

- (a) Reimbursable first-party costs shall be those reasonable costs incurred for corrective action subject to the limitations set forth in Odb 401.29 and categorized as follows:
 - (1) Management of virgin petroleum contaminated soils in accordance with Env-Ws 412;
 - (2) Management of motor oil or used motor oil contaminated soils in accordance with Env-Wm 100 2800;
 - (3) Services associated with temporary surface water discharge permits under federal and state authority, provided such services are not associated with the closure or installation of a facility;

- (4) Corrective action performed in accordance with Env-Ws 410;
- (5) Corrective action performed in accordance with Env-Ws 412; and
- (6) Fees for corrective action permits required by local, state and federal agencies.
- (b) Reimbursement of first-party costs shall be contingent upon approval of a work scope and budget in accordance with Odb 401.27, as applicable.

Source. #6543, eff 7-22-97

Odb 401.29 First-Party Cost Limitations.

- (a) With the exception of corrective action performed by an owner or property transferee, reimbursable costs shall be limited to costs charged by consultants and contractors, and shall not include costs for work which is not directly associated with the performance of corrective action.
- (b) The costs for local, state or federal inspection fees, or charges related to obtaining access, shall not be reimbursable.
- (c) The costs for restoration of excavated contaminated soil shall be limited to the cost of in-kind replacement.
- (d) The cost for property restoration which is not a cost resulting from performance of corrective action shall not be reimbursable.
 - (e) A facility owner's or property transferee's legal costs shall not be reimbursable.
- (f) A facility owner's or property transferee's administrative, fiduciary, management or supervisory costs associated with performance of corrective action shall not be reimbursable.
- (g) Costs related to achieving facility compliance, including closure assessments under department rules, shall not be reimbursable.
 - (h) Interest charges on unpaid invoices shall not be reimbursable.
- (i) Reimbursement shall be limited to reasonable costs as defined by Odb 401.03(ad), and no reimbursement shall exceed actual invoiced costs paid or incurred less any discounts received.
- (j) Costs invoiced by a general contractor for administration of subcontracted services shall be limited to 10 percent of the actual invoiced costs for the subcontracted service paid or incurred less any discounts received.
 - (k) Penalties or enhanced cost recovery under RSA 146-A or RSA 146-C shall not be reimbursable.
- (l) Overtime costs for performance of routine corrective action services shall be reimbursable at the straight-time rate. Overtime costs for emergency services shall be reimbursable at the prevailing market rates.

- (m) Costs associated with the discovery of a discharge shall not be reimbursable.
- (n) Costs in excess of approved budgets which have not been justified shall not be reimbursable.

Source. #6543, eff 7-22-97

Odb 401.30 Owner's Duties in the Event of Claim or Suit.

- (a) In the event that a demand is made against an owner by a third party for damages resulting from bodily injury or property damage, the owner shall immediately forward such demand to the board and shall inform the board of any attempts made to settle the matter before the filing of a writ or petition. The owner shall undertake any actions necessary to obtain a reasonable settlement, including initiating demands against other parties who may be liable to the owner for such damages.
- (b) Upon service of a writ or petition filed in a court of law by a third party against the owner for damages resulting from bodily injury or property damage, the owner shall provide written notice to the board within 60 days of service. The writ or petition must identify or name the owner of the facility, as well as the location of the facility, in order to be deemed a reimbursable third-party claim. Owners that fail to provide timely notice to the board shall not be eligible for reimbursement of third-party damage costs.
- (c) The owner shall provide the board with a copy of all documents related to the third-party action, including those filed with the court, and shall provide timely notice of scheduled hearings, settlement conferences and other actions throughout the proceedings.
- (d) The owner shall undertake a reasonable and adequate defense of the claim to preserve the right to seek reimbursement for third-party damage costs from the fund. The owner shall cooperate fully with the board in all matters relating to defending the claim.
- (e) The owner shall enforce any right to contribution or indemnity against any person or organization who may be liable to the owner or to the third party claimant and shall seek to join such person or organization in any suit brought by a third party against the owner.
- (f) The owner shall submit all proposed settlements to the board for review before entering an agreement with the claimant and before seeking approval from the court.

Source. #6543, eff 7-22-97

Odb 401.31 Board Intervention in Third-Party Action.

- (a) The board shall not be responsible for the defense of the owner but shall have the right to intervene in the action as a party in interest, and shall have the right to participate in all settlement discussions related to a threatened or filed third-party action.
 - (b) The owner shall concur in any motions to intervene filed with the reviewing court by the board.

Source. #6543, eff 7-22-97

Odb 401.32 Eligibility for Reimbursement of Third-Party Damage Costs

- (a) The owner is eligible for reimbursement of third-party damage costs that are not payable by other insurance, to the extent that the court-ordered judgment or settlement consists of compensable bodily injury costs or property damage costs suffered by the claimant.
- (b) If the board determines that a proposed settlement is collusive, is not legally or factually supportable or does not fairly reflect compensable third party damages, it shall so notify the owner and shall deny any subsequent request for reimbursement based upon such settlement.
- (c) If an owner proceeds to seek court approval of a settlement to which the board objects under paragraph (b), the board shall notify the court of such objection.
- (d) The board shall deny any request for reimbursement of third-party damage costs to the extent that the settlement or judgment meets the criteria for objection under paragraph (b).
- (e) An owner's legal fees and costs, including contingent fees, punitive awards, statutory double damages, and fines and costs imposed by the court shall not be reimbursable.
- (f) All settlements entered into by an owner shall allocate legal fees costs, and double damages fines and costs, if any, separately from amounts payable to the plaintiffs. The owner shall request that the amount awarded for legal fees, costs and double damages fines and costs, if any, be identified in any jury or court award or verdict.

Source. #6543, eff 7-22-97

Odb 401.33 Third-Party Cost Limitations.

- (a) No reimbursement shall be made from the fund for third-party damage costs until the amount of the owner's obligation to pay is finally determined either by judgment against the owner after trial on the merits or by written agreement between the owner and the claimant and entered as an order by a court of law.
- (b) No reimbursement shall be made from the fund for third-party damage costs until the owner has provided a sworn certification and written proof to the board that other insurance would not cover all or any portion of such damages. If other insurance would cover a portion of such damages, then the fund shall be liable to the extent set forth in Odb 401.07.
- (c) Reimbursable third-party damage costs shall be limited to certain monetary damages for bodily injury or property damage as defined in these rules as a result of a court-ordered judgment or court approved settlement entered as an order of the court. The board shall not be bound by any obligations imposed upon the owner through settlement or court-approved judgment for injunctive relief or defense and indemnity of future actions by third parties against the claimant.
- (d) No reimbursement shall be made from the fund for liability attributable to any party other than the owner. In all multi-party cases, all settlements entered into by the owner shall apportion liability among the pertinent parties. The owner shall request that the court order apportion liability among the pertinent parties in any jury or court award or verdict.

(e) Where an owner's third-party damage costs are based on a civil judgment, the costs shall not be eligible if resulting from a default judgment, or a proceeding otherwise not on the merits or not litigated by the owner to secure a reasonable settlement.

Source. #6543, eff 7-22-97

Odb	401.34	Forms.
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- (a) Requests for reimbursement from the fund shall be made to the board on forms provided by the board.
 - (b) Requests for reimbursement shall include the following information:
 - (1) The type of facility;
 - (2) Whether reimbursement is sought for first-party costs or third-party damage costs;
 - (3) The request number;
 - (4) The amount of the request;
 - (5) The date of discharge discovery;
 - (6) Facility information including:
 - a. Name;
 - b. Address;
 - c. Location town;
 - d. Whether the facility is active or permanently closed;
 - e. The department's facility identification number; and
 - f. The department's project number;
 - (7) Owner information including:
 - a. Name;
 - b. Mailing address;
 - c. Daytime phone number;
 - d. Number of facilities owned;
 - e. Whether other insurance coverage is available;

f. The owner's signature; and

g.	The date signed;
(8) Whe	ether facility ownership has been transferred;
(9) If ap	oplicable, the date of ownership transfer;
(10) If a	applicable, property transferee information including:
a.	Name;
b. 1	Mailing address;
с.	Daytime phone number;
d.	The property transferee's signature; and
е. Т	The date signed;
(11) If a	applicable, applicant information including:
a.	Name;
b. 1	Mailing address;
c. 1	Daytime phone number;
d.	Type of applicant;
e. '	The applicant's signature; and
f. 7	The date signed.
(c) The information (c) the submitted by a proper	mation requested under Odb 401.34 (b)(7) above, shall not be required when a request is crty transferee.
	Source. #6543, eff 7-22-97
Odb 401.35 R	Requests for Reimbursement.

(b) An owner may submit a request for reimbursement for third-party damage costs within 60 days of the date of a valid, final court order or court approved settlement for bodily injury costs or property damage

rules. Periodic requests may be submitted for on-going cleanup activities pursuant to Odb 401.23.

(a) An owner, property transferee or applicant may submit a request for reimbursement for first party costs to the board upon completion of a corrective action phase performed in accordance with department

costs as defined in these rules. If a court order becomes final prior to the effective date of these rules, the request shall be submitted within 60 days of the effective date of these rules.

- (c) An owner may submit a request for reimbursement for third-party damage costs if notification was provided pursuant to Odb 401.30(b).
- (d) An owner, property transferee or applicant may submit a request for reimbursement when the limits of coverage under other valid and collectible policies of insurance held by the owner, if any, have been reached.

Source. #6543, eff 7-22-97

Odb 401.36 Reimbursement Submittal Requirements.

- (a) Requests for reimbursement for first-party costs shall include:
 - (1) A completed request for reimbursement form which includes the information required under Odb 401.34;
 - (2) A summary of invoiced expenses by task, class, and contractor, or department workscope approval notice as applicable;
 - (3) Copies of all contractor and subcontractor invoices and receipts for expenses for corrective action by class, as described under Odb 401.27;
 - (4) Copies of all corrective action reports not previously submitted;
 - (5) A copy of the corrective action contract under Odb 401.14 if applicable;
 - (6) Certified weigh data, analytical data and certificate of destruction for petroleum contaminated soils if applicable;
 - (7) Certified weigh data for replacement fill if applicable;
 - (8) Employee payroll records, cost of employee benefits and equipment operating cost data when corrective action is performed by the owner or property transferee;
 - (9) Other insurance information required under Odb 401.07, if applicable;
 - (10) Facility compliance information if applicable; and
 - (11) Copies of contractor daily work logs and cost estimate or the "Authorization for Initial Response Action" form, as applicable.
- (b) A re-submittal of information related to a first-party cost request previously reviewed by the department and board shall include a cover letter explaining the basis of the re-submittal and a copy of the reimbursement approval notice issued under Odb 401.37(g) indicating which invoices are being re-submitted.

- (c) Submittal of facility compliance information shall include a cover letter explaining the information and the reason for the submittal.
 - (d) Requests for reimbursement for third-party damage costs shall include:
 - (1) A completed request for reimbursement form which includes the information required under Odb 401.34;
 - (2) The name, address, and telephone number of the third-party(s) to whom the owner has been found to be liable and all parties to the proceedings;
 - (3) A description of the bodily injury or property damage for which the owner has been found to be liable;
 - (4) A summary of the legal proceedings resulting in the court order including a chronology of pleadings, hearings and settlement conferences, a list of witnesses, exhibits and affidavits, and a brief description of the testimony and evidence, if applicable;
 - (5) A copy of the final court order or court approved settlement;
 - (6) Other insurance information required under Odb 401.07, if applicable; and
 - (7) Facility compliance information, if applicable.

Source. #6543, eff 7-22-97

Odb 401.37 Reimbursement Approval Procedures.

- (a) Upon receipt of a request for reimbursement, the board shall request that the department determine if the request is complete pursuant to Odb 401.35. Any request which is not complete shall be returned to the owner, property transferee or applicant within 30 days of receipt by the board.
- (b) If applicable, the board shall request that the department determine the compliance status of the facility pursuant to Odb 401.05 upon receipt of a complete reimbursement request.
- (c) Upon receipt of a complete reimbursement request, the board shall request that the department report its recommendation for reimbursement within 90 days of receipt of a request.
- (d) In consideration of the departments recommendation, the board shall determine the amount of reimbursement based on the eligible cost criteria of Odb 401.28, Odb 401.29, Odb 401.32 and Odb 401.33, as applicable, and shall authorize the state treasurer to disburse said amount from the fund.
- (e) All reimbursements made from the fund for corrective action costs invoiced by the department which have not been paid by the owner or property transferee, shall be paid directly to the department.
- (f) All reimbursements made from the fund for corrective action costs which have not been paid by the owner or property transferee, shall be co-payable to the owner or transferee and the contractor.

(g) On behalf of the board, the department may issue a notice of reimbursement to the owner, property transferee or applicant.

Source. #6543, eff 7-22-97

Odb 401.38 <u>Priority</u>. The board shall consider requests for reimbursement from the fund in the chronological order received.

Source. #6543, eff 7-22-97

Odb 401.39 Requests for Reconsideration.

- (a) Any owner, property transferee, applicant, or distributor as defined in RSA 146-D:2, I, who is aggrieved by a decision of the department or the board may request an opportunity for an appearance before the board to present additional information.
- (b) A request for appearance shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.
- (c) The board shall establish a date, time and place for the aggrieved party to appear, at its next regularly scheduled meeting following the receipt of a request, and shall provide written notice to the party.

Source. #6543, eff 7-22-97

Odb 401.40 Requests for Waivers.

- (a) An owner, property transferee or applicant may request the board to waive the application of the rules pertaining to fund eligibility and reimbursement, unless such request, if granted, would constitute a waiver of statutory requirements.
- (b) Requests for waivers shall be submitted in writing to the board and shall include the following information:
 - (1) A specific reference to the section of the rule for which a waiver is being sought;
 - (2) A full explanation of why a waiver is necessary;
 - (3) A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and
 - (4) A full explanation of how the granting of a waiver would be consistent with the intent of RSA 146-D, RSA 146-E or RSA 146-F and these rules.
- (c) The board shall approve a request for a waiver, upon finding that the criteria of Odb 401.40(b) has been met.
 - (d) The board shall provide written notice of its decision.

Source. #6543, eff 7-22-97

CHAPTER Odb 500 - REPEALED

<u>Source.</u> #4918, eff 8-22-90; ss by #5114, eff 4-16-91; ss by #5535, eff 12-21-92; rpld by #6543, eff 7-22-97

RSA 146-D

Oil Discharge and Disposal Cleanup Fund

146-D:1 Purpose. – The general court finds that gasoline and diesel fuel, due to their extreme fluidity and suspected carcinogenic qualities, comprise a sufficiently distinct class of property which represents a potential serious health and safety problem to the citizens of New Hampshire. In particular, gasoline and diesel fuel present a potential threat to the quality of New Hampshire's groundwater and environment because of the speed with which these products are able to flow into, and contaminate, valuable groundwater supplies. The purpose of this chapter is to establish financial responsibility for the cleanup of oil discharge and disposal, and to establish a fund to be used in addressing the costs incurred by the owners of underground storage facilities and bulk storage facilities for the cleanup of oil discharge and disposal, to protect groundwater, and for reimbursement for third party damages. An additional purpose is to provide a funding source for cleanup and reimbursement for discharges of gasoline ethers pursuant to RSA 146-G. The fund established under this chapter shall be in addition to the oil pollution control fund established pursuant to RSA 146-A:11-a, and the gasoline remediation and elimination of ethers fund established under RSA 146-G.

Source. 1988, 271:1. 1993, 40:1, eff. June 7, 1993. 2001, 293:7, eff. July 1, 2001.

146-D:2 Definitions. – In this chapter:

- I. "Distributor" means any person, wherever resident or located, who imports or causes to be imported oil, as defined in this section, into the state, except those using oil pipelines, railroads, and highways to transport oil products between states other than New Hampshire, or for the international transport of oil products; provided, however, that bringing motor fuel into the state in the fuel supply tank attached to the engine of a vehicle or aircraft shall not be considered importing. "Distributor" does not mean an oil spill cleanup organization or other person acting to contain, remove, clean up, restore or take other remedial or corrective action or measures with regard to the spillage or discharge of oil, or threatened spillage or discharge of oil.
- II. "Underground storage facility" means a location consisting of a system of underground storage tanks, pipes, pumps, vaults, fixed containers and appurtenant structures, singly or in any combination, which are used or designated to be used for the storage, transmission, or dispensing of oil or petroleum liquids, and which are within the size, capacity and other specifications prescribed by rules adopted by the commissioner pursuant to RSA 146-C:9, VI.
- III. "Oil" means gasoline and diesel products for purposes of collection of fees under RSA 146-D:3, and shall mean "oil" as defined under RSA 146-C:1, XII, for purposes of reimbursement of costs for cleanup and third party damages resulting from a discharge. For the purposes of collecting fees under RSA 146-D:3, the term "oil" shall not include natural gas, liquefied petroleum gas, or synthetic natural gas, regardless of derivation or source, or any oil or diesel products used for heating, processing, or generating electricity.
 - IV. [Repealed.]
- V. "Bulk storage facility" means a location not regulated under RSA 146-C, consisting of a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, with a total storage capacity less than or equal to 1,100,000 gallons, which is or has been used for the storage and distribution of gasoline or diesel products.
 - VI. "Commissioner" means the commissioner of the department of environmental services.
 - VII. "Department" means the department of environmental services.
 - VIII. "Gasoline" means all products commonly or commercially known or sold as gasoline, including

casing head and absorption of natural gasoline, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale, or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (ASTM Designation D-86) show not less than 10 percent distilled (recovered) below 347 degrees Fahrenheit (175 degrees Centigrade) and not less than 95 percent distilled (recovered) below 464 degrees Fahrenheit (240 degrees Centigrade); provided that the term gasoline shall not include commercial solvents or naphthas which distill by ASTM method D-86 not more than 9 percent at 176 degrees Fahrenheit and which have a distillation range of 150 degrees Fahrenheit or less, or liquefied gases which would not exist as liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

IX. "Diesel fuel" means a liquid hydrocarbon fuel used in internal combustion high speed engines that operate with a diesel thermodynamic cycle.

Source. 1988, 271:1. 1989, 230:9. 1990, 3:99. 1991, 322:1. 1993, 40:2, 3; 294:3, 17, I. 1995, 247:1, eff. July 1, 1995. 1996, 228:29, 110, eff. July 1, 1996. 2001, 293:8, eff. July 1, 2001.

146-D:3 Fund Established: Collection. –

I. There is established an oil discharge and disposal cleanup fund. This fund shall be used, consistent with the provisions of this chapter, to reimburse costs incurred in cleaning up oil discharges and disposals in the groundwaters and surface waters and soils of the state and in paying third party damages, including administrative, technical and legal support required by the oil fund disbursement board in administering the fund. The fund shall be collected as a fee imposed on all oil imported into this state.

II. Any distributor who imports, or who causes oil to be imported into this state shall first be licensed with the department of safety. A fee of \$.015 per gallon of oil shall be assessed at the time of importation into this state. All fees shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. If the fund's balance becomes greater than \$10,000,000, the fund assessment fees provided for in this paragraph shall be discontinued and only reestablished when the fund's balance is less than \$5,000,000. Any distributor who imports or blends home heating oil which is subsequently sold as diesel fuel for the propulsion of motor vehicles shall report the fuel as required in RSA 146-D:3, III. Any person purchasing home heating oil for diesel use and not declaring this intent to the distributor at the time of purchase shall be liable in the same manner as the distributor would be.

III. The fee provided for in this section shall be collected by agents of the department of safety, in the same manner as provided for in RSA 260:38. Such funds shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. Any person who fails to obtain a license, file a report, or pay the fees established in this chapter shall be subject to the penalties and interest described in RSA 146-A:11-b. The board, pursuant to rules adopted under RSA 146-D:5, may waive all or any portion of such penalties, for good cause.

- IV. Moneys collected for the fund shall be deposited with the state treasurer to the credit of said fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.
- V. No distributor licensed under this section shall import oil into this state without paying the fee required by this section. Any distributor licensed under this section may seek and shall receive for valid claims an import credit for oil which a distributor transfers out of state during any reporting period.
- VI. The fee collected on motor fuels shall be deposited in the oil discharge and disposal cleanup fund, except as provided in subparagraph (b), and divided as follows:
- (a) For each gallon of diesel fuel for which a fee is assessed, \$.014 shall be placed in an account for reimbursement of owners of eligible underground storage facilities and \$.001 shall be placed in an account to be used for reimbursement of owners of eligible bulk storage facilities.
- (b) For each gallon of gasoline for which a fee is assessed, \$0.0115 shall be placed in the underground storage facilities account, \$0.001 shall be placed in the bulk storage facilities account and \$0.0025 shall be placed in the gasoline remediation and elimination of ethers fund established under RSA

146-G.

(c) For all fees assessed on gasoline during the period from January 1, 2001 to July 1, 2001 and deposited in the account for reimbursement of owners of eligible underground storage facilities, 18 percent of those fees shall be transferred to gasoline remediation and elimination of ethers fund established under RSA 146-G.

VII. All moneys in the oil discharge and disposal cleanup fund prior to the effective date of this paragraph shall be available only for reimbursement of owners of underground storage facilities, except that, within 30 days after the effective date of this paragraph, the oil fund disbursement board shall make \$580,000 of such moneys available for reimbursement of owners of bulk storage facilities. This shall be a one-time only transfer of funds between accounts for the start-up of the bulk storage reimbursement program. One-half of the \$.001 per gallon collected for bulk storage facilities shall be deposited in the account for reimbursement of owners of underground storage facilities until the \$580,000 has been returned in full.

Source. 1988, 271:1. 1989, 230:10. 1990, 3:100, 101; 252:20. 1991, 322:2. 1993, 40:4, 5; 294:4-6. 1995, 247:2, 3, eff. July 1, 1995. 2001, 293:9, eff. July 1, 2001.

146-D:4 Oil Fund Disbursement Board Established; Membership. –

- I. There is established the oil fund disbursement board, to be composed of the following members:
 - (a) The commissioner of environmental services, or his designee.
 - (b) The commissioner of safety, or designee.
- (c) Three members representing petroleum dealers, distributors, and refiners, appointed by the governor with the consent of the council.
 - (d) Two public members, appointed by the governor with the consent of the council.
 - (e) Two members of the senate, appointed by the president of the senate.
 - (f) Two members of the house of representatives, appointed by the speaker of the house.
 - (g) One member, who shall be a fuel oil dealer, appointed by the governor.
 - II. The board shall select a chairman from among its members at its organizational meeting.
- III. The board members shall serve without compensation, except that all non-legislative members shall be reimbursed for mileage incurred on board business at the state employee mileage rate. The legislative members shall be reimbursed for mileage at the legislative rate. Such reimbursements shall be a charge against the oil discharge and disposal cleanup fund established under RSA 146-D:3, I.
- IV. Any member of the board having an individual interest, or an interest in another business, which may conflict with an issue under consideration by the board, shall not participate in any deliberations or vote of the board on the issue before the board.
- V. The terms of the board members shall expire on January 1, 1994. Subsequent terms for state agency and legislative members shall be the same as their terms in office. New board members appointed under subparagraphs I(c) and I(d) shall have 3-year terms, except that the initial term for the member representing the petroleum dealers shall be one year, and the initial terms for the member representing the petroleum distributors and for one of the public members shall be 2 years. Upon term expiration, each appointed member shall hold office until a successor shall be appointed and qualified. Board members may be reappointed to subsequent terms, including those members whose terms expire as of January 1, 1994.

Source. 1988, 271:1. 1993, 294:7, 8, eff. July 1, 1993; 337:3, eff. Aug. 28, 1993.

146-D:5 Board Powers and Duties. -

- I. The board shall adopt rules, pursuant to RSA 541-A, relative to:
 - (a) Processing applications for compensation from the oil discharge and disposal cleanup fund.
 - (b) Procedures for verifying claims presented under this chapter.
 - (c) Specifying costs in relation to reimbursements claimed.
 - (d) Developing eligibility criteria in addition to the requirements of RSA 146-D:6, I and I-a.

- (e) [Repealed.]
- (f) Waiver of penalties due or past due under RSA 146-D:3, III.
- II. The board shall submit an annual report of the status of the oil discharge and disposal cleanup fund no later than October 1, to the speaker of the house and the president of the senate. The first such report shall be submitted no later than October 1, 1993.
- III. The board, with approval of the governor and council, may employ legal counsel as necessary to perform its duties in administering the oil discharge and disposal cleanup fund.
- IV. The board may request that the attorney general issue subpoenas, examine witnesses, or request any other information on behalf of the board for the purposes of determining eligibility for reimbursement under this chapter, or under RSA 146-E and 146-F.

Source. 1988, 271:1. 1990, 141:1, 3, I; 252:21. 1991, 322:3. 1993, 40:6, eff. June 7, 1993; 294:9, eff. July 1, 1993. 1997, 39:1, eff. Jan. 1, 1998.

146-D:5-a Competitive Bidding Required; Rulemaking. –

- I. The commissioner of environmental services shall enter into the competitive bidding process for any project undertaken by the department of environmental services under the authority of this chapter with an estimated cost of \$10,000 or more. The commissioner may enter the competitive bidding process for any such project with an estimated cost of less than \$10,000.
- II. The commissioner of environmental services shall adopt rules, pursuant to RSA 541-A, relative to the competitive bidding process to be used under this section.

Source. 1991, 322:7, eff. Aug. 27, 1991.

146-D:6 Eligible Expenses. –

- I. The portion of the fund for reimbursement of owners of underground storage facilities shall be available to owners of underground storage facilities which are subject to the provisions of RSA 146-C and which are in compliance with New Hampshire Code of Administrative Rules Env-Ws 411. Owners of regulated underground storage facilities with current permits and current records shall be eligible to apply to the fund. Ownership of facilities which have been physically removed or closed in place on or after July 1, 1988 in accordance with the requirements of Env-Ws 411 where cleanup of oil has not yet been completed may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund.
- I-a. The portion of the fund for reimbursement of owners of bulk storage facilities shall be available to owners of bulk storage facilities that are in compliance with all applicable federal and state requirements for such facilities. Ownership of facilities which have been physically removed or closed in place on or after July 1, 1993, in accordance with the requirements of the department where cleanup of oil has not yet been completed, may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund. Reimbursements shall only be made for costs of cleanup and third party damages associated with gasoline and diesel product spillage. To be eligible for reimbursement, the following registration requirements shall be met:
- (a) The owner shall have registered the facility with the department on forms provided by the department which shall include but not be limited to the following information:
 - (1) Facility name, location, and address.
 - (2) Owner's name, mailing address and telephone number.
 - (3) Contact person for the facility.
- (4) The storage capacity, product stored, material of construction, and age of the storage tanks and appurtenances.
- (b) Bulk storage facilities existing on or before July 1, 1993, shall be registered no later than July 1, 1996. Bulk storage facilities constructed after July 1, 1993, shall be registered no later than 60 days after

the completion of construction. The board may waive the registration deadlines established by this subparagraph, on a case by case basis, for good cause.

- II. (a) To the extent such amount is expended from the fund, or for such lesser amount as is expended, owners shall be liable to the fund for the following:
- (1) The owner of from one to 3 facilities shall be responsible for the initial \$5,000 of cleanup costs at each facility owned.
- (2) The owner of from 4 to 9 facilities shall be responsible for the initial \$10,000 of cleanup costs at each facility owned.
- (3) The owner of from 10 to 19 facilities shall be responsible for the initial \$20,000 of cleanup costs at each facility owned.
- (4) The owner of 20 or more facilities shall be responsible for the initial \$30,000 of cleanup costs at each facility owned.
- (b) This amount shall not be withheld from reimbursement when the reimbursement is disbursed from the fund over to a party other than an owner liable under this paragraph, but the owner shall be liable to the fund for the amounts set forth in subparagraph II(a). The board may pursue the owner in an independent legal action, and the owner shall be liable for interest from the date that the disbursement is made and for legal fees and costs incurred by the fund in obtaining and enforcing judgment under this paragraph. All amounts recovered shall be paid into the fund.
- III. Owners of facilities eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of onsite and off-site cleanup of oil discharges in amounts not to exceed a total of \$1,500,000. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.
- IV. Owners of facilities eligible under this chapter may apply for reimbursement for costs of cleanup and third party damages incurred on or after July 1, 1988.
- V. Costs of new tanks and associated piping, or repairs to existing tanks and associated piping, shall not be considered eligible costs under this chapter.
- VI. Notwithstanding any provision of this chapter, the department shall not be liable to any eligible party if sufficient funds are not available in the fund to meet the limits established in this chapter. Applications received by the department for which sufficient funds are not available at the time of application shall be held by the department pending availability of funds and shall be reviewed in the order in which they were received.
- VII. The board shall pay all eligible costs approved by the board within 30 days of such approval. If any eligible costs are not paid within 30 days, interest on any unpaid amount shall incur to the designated recipient at the rate of 1-1/2 percent per month. Any interest payments shall be a charge against the fund. Any application for compensation which is deemed to be incomplete by the board or the department of environmental services shall be returned to the applicant forthwith with a written explanation as to what additional information is necessary in order to process the application.
- VIII. For underground storage facilities which contain fuel oil as defined in RSA 146-E:2, II or motor oil, or used motor oil, only those facilities at which a release was discovered prior to January 1, 1995, are eligible for reimbursement from the oil discharge and disposal cleanup fund.
- IX. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1988, 271:1. 1990, 208:11, 13. 1991, 322:4. 1993, 40:7-9; 294:10-13; 337:6. 1995, 247:4-6, eff. July 1, 1995; 282:2, eff. July 1, 1995; 282:9, eff. Jan. 1, 2003. 1996, 228:106, 108, 109, eff. July 1, 1996. 1997, 39:2, 3, eff. Jan. 1, 1998. 2001, 33:1, eff. Aug. 7, 2001.

146-D:7 Penalties. –

- I. Any person who violates the provisions of this chapter shall be subject to the lien provisions provided in RSA 260:63 through RSA 260:65-a.
- I-a. Where any liability to a fund under RSA 146-D:6, RSA 146-E:6, or RSA 146-F:5 is not paid as prescribed by the oil fund disbursement board, the amount, including interest together with the costs that may accrue in addition thereto, shall become a lien in favor of the board upon all property and rights to property, whether real or personal, in the same manner as that prescribed in RSA 260:63 through RSA 260:65-a, which provisions shall govern the board"s imposition and enforcement of the lien created by this section.
- II. Any person who misrepresents any material fact or submits any false material statement, information, or certification to the board shall forfeit any right to reimbursement under this chapter.
- III. Any person who recklessly or knowingly misrepresents any material fact or who recklessly or knowingly submits any false material statement, information, or certification to the board shall be guilty of a class B felony if a natural person and guilty of a felony if any other person. Notwithstanding RSA 651:2, a person may, in addition to any sentence of imprisonment, probation, or conditional discharge, be fined not more than \$25,000 if found guilty of any violation under this paragraph.

Source. 1988, 271:1, eff. July 1, 1988. 1997, 39:4, eff. Jan. 1, 1998. 1998, 357:3, eff. July 1, 1998.

146-D:8 Administrative Costs. –

I. Notwithstanding any provision of law, if the expenditure of additional funds is necessary for the costs of administration of the collection process established in RSA 146-A:11-b, II and III, upon request of the commissioner of safety, the governor and council, upon recommendation of the oil fund disbursement board and with the prior approval of the fiscal committee of the general court, may authorize the transfer of funds from the oil discharge and disposal fund established under RSA 146-D:3, I to the department of safety for such purposes.

II. [Repealed.]

III. The commissioner of safety shall file reports with the oil fund disbursement board on a quarterly basis, relative to the administrative costs of the department's collection activities under RSA 146-D:3, III. Such report shall include detailed accounting of such costs, including procedures taken to separate such costs from any other administrative costs incurred by the department relative to any other statutory responsibilities of the department.

Source. 1988, 271:1. 1990, 141:2, eff. June 18, 1990; 141:3, II, eff. June 30, 1992

146-D:9 Board Administratively Attached. – The oil fund disbursement board shall be administratively attached to the department of environmental services pursuant to RSA 21-G:10.

Source. 1988, 271:1, eff. July 1, 1988

RSA 146-E

Fuel Oil Discharge Cleanup Fund

146-E:1 Purpose. – The general court finds that discharges of fuel oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of fuel oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the prevention and cleanup of fuel oil discharges.

Source. 1993, 337:1, eff. Aug. 28, 1993. 1999, 164:5, eff. July 1, 1999.

146-E:2 Definitions. – In this chapter:

- I. "Bulk storage facility" means a location not regulated under RSA 146-C, consisting of a system of storage tanks, pipes, pumps and appurtenant structures, singly or in any combination, with a total storage capacity less than or equal to 1,100,000 gallons, which is or has been used for the storage and distribution of fuel oil.
 - I-a. "Department" means the department of environmental services.
- II. "Fuel oil" means fuel oil products stored for on-premise heating purposes, and not for purposes of propulsion of motor vehicles, operation of machinery, or primarily used for the generation of electric power.
- III. "On-premise-use facility" means a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, which is or has been used for the storage of fuel oil for on-premise-use.

Source. 1993, 337:1. 1995, 282:3, eff. July 1, 1995. 1996, 228:30, eff. July 1, 1996.

146-E:3 Fund Established; Collection. -

- I. There is established a fuel oil discharge cleanup fund, which shall be administered by the oil fund disbursement board established under RSA 146-D:4. This fund shall be used to reimburse costs incurred in the prevention and cleanup of fuel oil discharges in the waters and soils of the state, including administrative, technical and legal support required by the oil fund disbursement board in administrating the fund, and in paying third party damages.
- II. A fee of \$.01 per gallon of fuel oil shall be assessed at the time of importation into this state. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which shall be collected and enforced in the manner described in RSA 146-D:3, III and V. All fee revenues shall be deposited in the fuel oil discharge cleanup fund. If the fund's balance becomes greater than \$2,500,000, the assessment of fees shall be discontinued and only reestablished when the fund's balance is less than \$1,500,000. Until the fund balance reaches \$2,000,000, at least 50 percent of the fees collected shall be allocated for reimbursements to on-premise-use facility owners and owners of land upon which on-premise-use facilities are located and for the administrative, technical and legal support associated with such reimbursements.
- III. Moneys collected for the fund shall be deposited with the state treasurer to the credit of said fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.

Source. 1993, 337:1, eff. Aug. 28, 1993. 1997, 58:1, eff. July 1, 1997 at 12:01 a.m. 1999, 164:3, 6, eff. July 1, 1999.

146-E:4 Requirements for On-Premise-Use Facilities. –

- I. On-premise-use facilities installed on or after the effective date of this act shall comply with the provisions of the National Fire Protection Association standard NFPA 31, and all applicable local codes or ordinances.
 - II. All on-premise-use facilities shall be equipped with a vent alarm system on or before July 1, 1995.
- III. On-premise-use facilities subject to the provisions of RSA 146-C shall comply with the provisions of New Hampshire code of administrative rules Env-Ws 411.

Source. 1993, 337:1. 1995, 282:4, eff. July 1, 1995.

- **146-E:5 Requirements for Bulk Storage Facilities.** The fund shall be available to owners of bulk storage facilities which are in compliance with all applicable federal and state requirements for such facilities. To be eligible for reimbursement, the following registration requirements shall be met:
- I. The owner shall have registered the facility with the department on forms provided by the department. Information on the form shall include, but not be limited to, the following:
 - (a) Facility name, location and address.
 - (b) Owner's name, mailing address and telephone number.
 - (c) Contact person for the facility.
- (d) The storage capacity, product stored, material of construction and age of the storage tanks and appurtenances.
- II. Bulk storage facilities existing on or before July 1, 1993, shall be registered no later than July 1, 1996. Bulk storage facilities constructed after July 1, 1993, shall be registered no later than 60 days after the completion of construction.

Source. 1993, 337:1. 1995, 247:7, eff. July 1, 1995. 1996, 228:109, eff. July 1, 1996.

146-E:6-a Penalties. – Any person who violates any provision of this chapter shall be subject to the penalties provided in RSA 146-D:7.

Source. 1997, 39:6, eff. Jan. 1, 1998.

146-E:7 Annual Report. – The oil fund disbursement board shall submit by October 1 of each year an annual report on the status of the fuel oil discharge cleanup fund to the governor, the speaker of the house and the senate president. The first report shall be submitted no later than October 1, 1994.

Source. 1993, 337:1, eff. Aug. 28, 1993.

RSA 146-F

Motor Oil Discharge Cleanup Fund

146-F:1 Purpose. – The general court finds that discharges of motor oil and used motor oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of motor oil and used motor oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the cleanup of motor oil and used motor oil discharges.

Source. 1995, 282:1, eff. July 1, 1995.

146-F:2 Definitions. – In this chapter:

- I. "Motor oil' means any lubricating oil, which is reclaimable, classified for use in an internal combustion engine, transmission, gear box, or differential for a motor vehicle, boat, or off-highway recreational vehicle, or commercial or household power equipment.
- II. "Motor oil storage facility' means a location consisting of a system of storage tanks, pipes, pumps, and appurtenant structures which is, or has been, used for the storage of motor oil or used motor oil.

Source. 1995, 282:1, eff. July 1, 1995.

146-F:3 Fund Established; Collection. –

- I. There is established a motor oil discharge cleanup fund, which shall be administered by the oil fund disbursement board established under RSA 146-D:4. This fund shall be used to reimburse costs incurred in the cleanup of motor oil and used motor oil discharges in the waters and soils of the state, including administrative, technical, and legal support required by the oil fund disbursement board in administering the fund, and in paying third party damages.
- II. A fee of \$.04 per gallon of motor oil shall be assessed at the time of importation into this state. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which shall be collected and enforced by the department of safety in the manner described in RSA 146-A:11-b. The oil fund disbursement board may waive all or any portion of penalties or interest for good cause. All fee revenues shall be deposited in the motor oil discharge cleanup fund. If the fund's balance becomes greater than \$1,000,000, the assessment of fees shall be discontinued and only reestablished when the fund's balance is less than \$600,000.
- III. Moneys collected for the fund shall be deposited with the state treasurer to the credit of the fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.
- IV. Within 30 days after the effective date of this paragraph, the department of environmental services shall transfer \$400,000 from the oil pollution control fund to the motor oil discharge cleanup fund. This shall be a one-time only transfer of funds for the start-up of the motor oil discharge cleanup fund. Half of the \$.04 per gallon collected for motor oil storage facilities shall be deposited in the oil pollution control fund until the \$400,000 has been returned in full.

Source. 1995, 282:1, eff. July 1, 1995.

146-F:4 Requirements for Motor Oil Storage Facilities. – The fund shall be available to owners of motor oil storage facilities, which are in compliance with all applicable federal and state requirements and local codes and ordinances for such facilities.

Source. 1995, 282:1, eff. July 1, 1995.

146-F:5 Eligible Expenses. –

- I. The fund shall be available to owners of motor oil storage facilities, and owners of land upon which motor oil storage facilities are located. The oil fund disbursement board may adopt rules for administering disbursements from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of motor oil storage facilities shall be liable to the fund for initial cleanup costs in the manner described in RSA 146-D:6, II.
- II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and offsite cleanup of motor oil and used motor oil discharges in amounts not to exceed \$500,000, incurred on or after the effective date of this chapter.
- III. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.
- IV. Requests for reimbursement received by the oil fund disbursement board shall be reviewed in the order in which they are received. If sufficient funds are not available the request shall be held by the board pending availability of funds.
- V. Facilities which have not met the requirements of RSA 146-F:4 shall not be eligible for reimbursement until compliance with such section has been achieved.
- VI. Costs of new tanks and associated piping, or repairs to existing tanks and associated piping, shall not be considered eligible costs under this chapter.
- VII. The fund shall only be available for reimbursement of costs incurred for releases of motor oil or used motor oil discovered after January 1, 1995.
- VIII. Ownership of facilities or land eligible under this chapter where the facilities have been physically removed or closed in place on or after October 1, 1995 in accordance with the requirements of the department and where cleanup of oil has not yet been completed, may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund.
- IX. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1995, 282:1, eff. July 1, 1995. 1997, 39:7, eff. Jan. 1, 1998.

146-F:5-a Penalties. – Any person who violates any provision of this chapter shall be subject to the penalties provided in RSA 146-D:7.

Source. 1997, 39:8, eff. Jan. 1, 1998.

146-F:6 Annual Report. – The oil fund disbursement board shall submit by October 1 of each year an annual report on the status of the motor oil discharge cleanup fund to the governor, the speaker of the house and the senate president. The first report shall be submitted no later than October 1, 1996.

Source. 1995, 282:1, eff. July 1, 1995.